No. 12014

United States
Court of Appeals
for the Ninth Circuit

E. B. SWOPE, Warden, United States Penitentiary, Alcatraz, California,

Appellant,

vs.

CECIL L. WRIGHT,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

NAMES AND ADDRESSES OF ATTORNEYS

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Northern District of California,
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Attorney for Respondent and Appellant.

CECIL L. WRIGHT,
Box 579—PMB,
Alcatraz, California,
In Propria Persona.

To the Honorable William Denman, United States Circuit Judge in and for the Ninth Judicial Circuit, San Francisco, California.

No. 28026

CECIL L. WRIGHT,

Petitioner,

v.

JAMES A. JOHNSTON, Warden, United States Penitentiary, Alcatraz, California,

Respondent.

PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM

The Verified Petition of Cecil L. Wright for a Writ of Habeas Corpus Ad Subjiciendum respectfully shows your Honor that:

I.

Your petitioner is unlawfully restrained of his liberty by James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California; the body of your petitioner, the said James A. Johnston and the said United States Penitentiary at Alcatraz, California, are all, and each of them, within and subject to the jurisdiction of the Honorable William Denman and the Ninth Judicial Circuit.

II.

Petitioner is entitle to file this petition under the authority of and in conformity with the provisions contained in Title 28 U.S.C.A., Sections 452 et seq., and in re Wright, 9 Cir., 51 F. Supp. 639,-

644. See also Wright v. Johnston, 9 Cir., 74 Supp. 25, 26. Petitions like the instant one have been presented to the United States District Court for the Northern District of California, Southern Division Thereof. The last petition was filed on January 8, 1948, assigned to [1*] District Judge Harris and in accordance with the practice established in Walker v. Johnston, 312 U.S. 275, an order to show Cause issued. On January 26, 1948, the respondent filed his return to order to show Cause alleging that petitioner had filed nine petitions for Writ of Habeas Corpus and that the instant petition before the Court should be denied upon the authority of Swihart v. Johnston, 9 Cir., 150 F. (2d) 721, Cert. denied, 327 U.S. 789.

Upon the question of denial of the effective assistance of Counsel it is clear that the trial Court deprived the petitioner of Constitutional right to choice of Counsel at the time of trial. The case of Glasser v. United States, 315 U.S. 60, sustains petitioner's claim of deprival of rights guaranteed by the Sixth Amendment to the United States Constitution, Swihart v. Johnston, supra, suspends the use of the Writ of Habeas Corpus in violation of Article 1, Section 9, Clause 2. The Court in the Swihart Case was without jurisdiction to pass upon a petitioner's right to petition for Writ of Habeas Corpus, that is, the Constitutional right to file petition for Writ of Habeas Corpus invokes of itself

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* Page numbering appearing at foot of page of original certified Transcript of Record.

the right to litigate the issues. The Swihart case was an example of an ignorant inmate that sought petition for Writ of Habeas Corpus without knowledge of appeal procedure. In filing the second petition for Writ of Habeas Corpus it was Swihart's belief that he could obtain relief on his second petition without an appeal from the order of judgment on the first. But in such attempt on his second petition in appeal from the second judgment, the Circuit Court by its action rendered decision suspending the use of the Writ of Habeas Corpus. Such action of the Ninth Circuit in the Swihart case violates due process of law. Supposing a petitioner filed petition for Writ of Habeas Corpus in the California District Court upon question of denial of Constitutional rights under the Federal Constitution and the District Court denied the relief sought by such petition. In the next year the Supreme Court ruled in favor of the question in another case; the petitioner's attempted to re-litigate the issue would be shut off by the holding under the Swihart decision [2]

In the case at bar the questions here were reserved in Johnston v. Wright, 9 Cir., 137 F. 2d 914, 918, therein the Court held:

"The appellee alleges other reasons for his release. They were not all ruled upon. In the view we entertain of this proceeding, it will not be useful to give attention to these issues." (Emphasis Petitioner's.)

In the respondent's return before District Judge Harris it was alleged that petitioner had filed nine

writs. He incorporates all the petitions filed prior to Johnston v. Wright, supra, including the findings before Judge St. Sure in case No. 23647-S all of which were before the Circuit Court in Johnston v. Wright, supra.

Petitioner attaches hereto and incorporates into this petition the petition for Writ of Habeas Corpus filed by before Judge Harris, the Warden's return and memorandum, the petitioner's demurrer and petition for Writ of Habeas Corpus ad prosequendum ad testificandum, designated as petitioner's Exhibit A, and by reference made a part hereof as though fully set forth at length word for word.

III.

FACTS INVOLVED

On September 16, 1930, petitioner was brought before United States District Court for the Eastern District of Illinois, Danville Division, hereinafter called the "trial Court", under a Writ to Habeas Corpus as prosequendum and upon arraignment he entered pleas of not guilty to two indictments theretofore returned and filed in the aforesaid trial Court. The aforesaid trial Court appointed one attorney to defend the petitioner and four other defendants jointly indicted. The appointment of Counsel was not made in open Court and petitioner was without knowledge that such counsel was a colored attorney. That in the late afternoon of September 16, 1930, appointed counsel came to the Vermilion County Jail and stated that the aforesaid trial Court had appointed him to represent all the defendants. Petitioner [3] states that he did

not desire to be represented by the appointment of colored counsel that had been selected by the Court. Appointed counsel stated that he would take the matter up with the Court the next morning but was unable to do so at that time as the Court was closed.

On September 17, 1930, petitioner and four co-defendants appeared in Court and appointed counsel stated that he could not effectively represent petitioner because the evidence to be introduced by the respective parties would be highly conflicting. Appointed counsel stated that it was petitioner's desire to employ counsel of the white race and that if the Court would grant a reasonable continuance that petitioner would employ counsel to prepare his defense. The Court refused to allow petitioner to employ counsel and stated that no time would be permitted for preparing a defense. Petitioner filed an affidavit in the aforesaid trial Court and moved for continuance to enable petitioner to secure the attendance of his witness as guaranteed by the compulsory process clause to the Sixth Amendment to the United States Constitution; and further advised the trial Court that the issue involved in said cause would be highly conflicting as to the evidence to be introduced by the respective parties; a copy of such affidavit reads in words and figures, to-wit:

HEADING OMITTED

Tuck Wright, one of the above named defendants, makes oath and says that he cannot safely proceed to trial of this cause at the present term of this

Court on account of the absence of one Glen Rommel and one Mary Rommel both of whom are material witnesses for the defendant in said cause and whose residence is 715 South Oakland Court, Decatur, Illinois. That this affiant expects to prove—by said witnesses, Glen Rommel and Mary Rommel, the following matters, all of which are material to the issue involved in said cause: That the affiant was not in Strasburg, Illinois, on the 9th day of April, 1930, when the Post Office at said place was burglarized; that this affiant was severely injured and was in the City of Decatur under the care of one Doctor McGill, and was not at or near the scene of the supposed crime; that all the [4] matters and things which the defendant expects to prove by the said Glen Rommel and Mary Rommel, are true.

And this affiant further says that he tried to communicate with the said Glen Rommel and Mary Rommel by writing letters out of the Southern Illinois Penitentiary but was prevented from doing so by the rules of said institution which forbid inmates to write more frequently than once in two weeks. This affiant further says that he is informed and believes that the issue involved in this cause will be controverted, and that the evidence relating to such issue will be highly conflicting, as introduced by the respective parties, and that he knows of no other person or persons than the said Glen Rommel and Mary Rommel by whom he can so fully prove the above matters set forth, and this affiant further says that he expects to and believes

that he will be able to procure the attendance and testimony of the said Glen Rommel and Mary Rommel at the next term of this Court.

And this affiant further says that the said Glen Rommel and Mary Rommel are not absent by the procurement, connivance or consent of this affiant, either directly or indirectly and that this application is not made for delay, but that justice may be done.

/s/ CECIL WRIGHT,
Affiant.

Subscribed and sworn to before me this 17th day of September, A.D. 1930.

/s/ D. H. REED,
Clerk of the United States District Court.

Petitioner alleges that the trial Court denied the above affidavit; that your petitioner entered motion for separate trial which motion was denied by the trial Court. Petitioner was forced to trial and convicted and sentenced for terms totaling ten years and to pay a fine of ten thousand dollars; a true and certified copy of the judgment and sentence is hereto annexed, designated petitioner's Exhibit A, and by reference made a part hereof as though fully incorporated herein at length. [5]

Petitioner alleges that in another case he withdrew his plea of not guilty and entered a plea of guilty thereto and was sentenced for a term of five years; a true and certified copy of the judgment and sentence is hereto annexed, designated peti-

tioner's Exhibit B, and by reference made a part hereof as though full incorporated at length.

That on June 25, 1944, your petitioner was delivered into federal imprisonment by order of commitments issued by the trial Court on June 21, and on June 22, 1944. Petitioner started service of sentence on June 21, 1944, and has fully completed and discharged the sentence of five years, petitioner's Exhibit B, and with allowance of good time as provided by law (18 U.S.C.A. Section 710) plus one hundred thirty-three industrial earned good days (18 U.S.C.A. Section 744h) such five years of federal sentence did expire on October 8, 1947, and petitioner not being subject to conditional release is entitled to discharge if his contention be sustained that the ten year sentence is void.

In Zerbst v. Murphy, 5 Cir. 92F. (2d) 671, the Court held: "This section has no application to a sentence imposed prior to its enactment." Certiorari denied Murphy v. Zerbst, 58 S. Ct. 749, 82 L. Ed. ..... [6]

IV.

PETITIONER'S CONTENTIONS

(1) It is the contentions of your petitioner and he alleges that the judgment and sentence, petitioner Exhibit A, is void without due process of law in violation of and contrary to the Fifth and Sixth Amendments of the United States Constitution, in that:

(a) The trial Court, denied your petitioner the effective and undivided assistance of counsel at the

time of trial by jury and likewise denied petitioner sufficient time to prepare his defense, and:

(b) The trial Court denied your petitioner compulsory process of law to obtain his witnesses and forced petitioner to trial within twenty-four hours after his arraignment.

(2) It is the contentions of your petitioner and he alleges that the judgment and sentence, petitioner's Exhibit B, has been lawfully served and he is entitled to collaterally attack the judgment and sentence, petitioner's Exhibit A in that:

(a) His Honor Judge Denman held in re Wright, 9 Cir., 51 F. Supp. 639, 644, that:

Wright's incarceration in Leavenworth and Alcatraz before his federal sentences commenced, has been without authority. His proof of the facts has made no value to him the several years spent there which, with good behavior credits, nearly fulfilled his five year sentence. His fifteen years of federal sentences will have to be served after the termination of the Illinois sentence, unless his contention be later maintained that his ten year sentence is invalid. (Emphasis Petitioner's.)

Wright claims the ten year federal sentence is void because the attorney assigned him by the District Court also represented other persons tried with him who had given confessions used at the trial, which confessions involved his participancy in the crime charged. He claims such an attorney would prejudice him with the jury and that he would not

be free to conduct a defense with the singleness of purpose the law requires." (Emphasis Petitioner's.) Glasser v. United States, 315 U.S. 60.

Your petitioner therefore contends and alleges that the District Court of San Francisco, California, has passed upon the questions presented here and decided adversely to petitioner's contentions, and upon the authority of Swihart v. Johnston, 9 Cir. 150 F (2d) 721, [7] petitioner cannot apply to the District Court for another Writ of Habeas Corpus, even though the records of the District Court of the United States of America in and for the Eastern District of Illinois, Danville Division thereof, denied your petitioner his Constitutional rights to have the effective and undivided assistance of his counsel at the time of trial by jury in Case No. 11032, petitioner's Exhibit A, and likewise denying your petitioner his Constitutional rights to have compulsory process of law to obtain witnesses in his favor as well as denied to your petitioner sufficient time to prepare his defense, and that the aforesaid judgment and sentence was void ab initio and petitioner's detention and imprisonment are void in violation of and contrary to the Fifth and Sixth Amendments to the United States Constitution.

V.

THE LAW AND THE ARGUMENT

Petitioner respectfully contends and urges that the judgment and sentence, petitioner's Exhibit A, is void because he was denied the effective and undivided assistance of his counsel at time of trial.

In Glasser v. United States, 315 U.S. 60, the Supreme Court of the United States held:

"The assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. To preserve the protection of the Bill of Rights for hard pressed defendants, every reasonable presumption against a waiver of fundamental rights is indulged." (Emphasis Petitioner's.)

Petitioner contends and respectfully urges that the Court's appointment of counsel was made at such a time that he could not prepare his defense. That such appointment of counsel was made for the defense of petitioner and four other defendants that had been jointly indicted.

In Powell v. Alabama (Emphasis Petitioner's), 53 s. Ct. 55, the Supreme Court decided that: "That the guaranteed right to the assistance of counsel includes a fair opportunity to an accused to secure counsel of his own choice and to have the effective and substantial aid of counsel (Emphasis Petitioner's), and also decides that the failure of a trial court to make an effective appointment of counsel is a denial of due process within the meaning of the Fourteenth Amendment."

And in: Johnson v. Zerbst. 304 U.S. 458, 466, 58

S. Ct. 1019, 1024-82 L. Ed. 1461, the Supreme Court decided that: [8]

"Congress has expanded the rights of a petitioner for a writ of habeas corpus * * *. There being no doubt of the authority of the Congress to thus liberalize the common law procedure on habeas corpus * * * in results that under the sections cited a prisoner in custody * * * may have a judicial inquiry * * * into the very truth and substance of the causes of his detention * * *. Such a judicial inquiry involves the reception of testimony, as the language of the statute shows." (Emphasis Petitioner's.)

Petitioner contends that his allegations are not inconsistent with recital of the certified copy of the affidavit and the judgment and sentence of the trial court and must be taken as true.

Williams v. Kaiser, 65 S Ct. 363;

Tomkins v. State of Missouri, 65 S Ct. 370.

Petitioner contends that the trial court denied him due process of law as the affidavit was made so that the petitioner could subpoena witnesses and prepare his defense.

In Hawk v. Olson, 66 S. Ct. 116, The Supreme Court decided that:

"Petitioner contends that his conviction violates the Fourteenth Amendment because of denial at his trial of an opportunity to examine the charge, subpoena witnesses, consult counsel and prepare a defense. Denial of effective assistance of counsel

does violate due process."

Petitioner urges that the trial court records show that the trial court appointed one attorney to represent the petitioner and four other defendants. That within twenty-four hours the trial court forced all the defendants to trial which denied petitioner the opportunity to subpoena witnesses, consult counsel and prepare his defense. Such colored counsel was not the choice of petitioner and although petitioner did object to a colored attorney the trial court burdened appointed counsel by making appointments of the same counsel to represent four other defendants. Petitioner and four others were indicted for conspiracy to violate Sections 315 and 313 of Title 18 U.S.C.A. The Supreme Court of the United States in a decision that is in point and controlling here said:

"The right of an accused to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations concerning the amount of prejudice arising from its denial." Glasser v. United States, 315 U.S. 60. [9]

And

Wallack v. Hudspeth, 10 Cir., 128 F. (2d) 343, at page 345, the Court said

"In reaching prompt disposition of criminal cases, a defendant, charged with serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense." (Emphasis Petitioner's.)

In

Wood v. United States, 128 F (2d) 265, at page 271, the Court said:

"The Constitutional 'right of accused' to counsel includes time for adequate preparations and extends to every step in the proceedings against the accused." U.S.C.A. Const. Amend. 5. (Emphasis Petitioner's.)

And in

Thomas v. District of Columbia, 67 App. D. C. 179, 90 F. (2d) 424, the Court said:

"Under the Sixth Amendment guaranteeing that in criminal prosecutions the accused shall enjoy the right to have the assistance of counsel and the 'due process of law' clause of the Fifth Amendment, 'Assistance of counsel' means effective assistance." (Emphasis Petitioner's.) U.S.C.A. Const. Amends. 5, 6.

The Supreme Court of the United States in Avery v. Alabama, 308, U.S. 444,447, 60 S. Ct. 322, 84 L. Ed 337, decided that:

"That the denial of opportunity for appointed counsel to confer, to consult with the accused and to prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel. The Constitution's guarantee of assistance of counsel cannot be satisfied by mere formal appointment. That where denial of the constitu-

tional right to assistance of counsel is asserted, its peculiar sacredness demands that we scrupulously review the record."

Again in Glasser v. United States, supra, the Court, speaking through Mr. Justice Murphy said:

"In conspiracy cases, where the liberal rules of evidence and the wide latitude accorded the prosecution may and sometimes do operate unfairly against an individual, it is especially important that the defendant be given the benefit of the undivided assistance of his counsel without the Courts becoming a party to encumbering that assistance. U.S.C.A. Const. Amend. 6. That in prosecutions for conspiracy to defraud the United States, where the trial court, though advised of the possibility that conflicting interests might arise which would diminish an attorney's usefulness to defendant for whom attorney had entered his appearance as [10] associate counsel, appointed attorney as codefendant's counsel, evidence showed that attorney's representation of defendant was not as effective as it might have been had the appointment not been made, and the Court thereby denied defendant his right to have the effective 'assistance of counsel' guaranteed by the Sixth Amendment. (Emphasis Petitioner's.) Cr. Code Section 37, 18 U.S.C.A. Section 88—U.S.C.A. Const. Amend. 6. An accused's desire to have the benefit of the undivided assistance of counsel of his own choice should be respected. The right of an accused to have the assistance of counsel is

too fundamental and absolute to allow court's to indulge in nice calculations concerning the amount of prejudice arising from its denial. The trial judge has the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused, and he should protect the right of an accused to have the assistance of counsel. The assistance of counsel guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interest. To preserve the protection of the Bill of Rights for hard-pressed defendants, every reasonable presumption against a waiver of fundamental rights is indulged. Though an accused may waive the right to assistance of counsel, whether there is a proper waiver should be clearly determined by the trial court. The guarantee of the Bill of Rights are the protecting bulwarks against the reach of arbitrary power, * * * deemed necessary to insure fundamental human rights of life and liberty. And a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel, Johnson v. Zerbst, 58 S. Ct. 1019; Powell v. Alabama, 53S Ct. 55; To preserve against the waiver of fundamental rights, Aetna Insurance Co. v. Kennedy, 57 S. Ct. 809; Ohio Bell Telephone Co. v. Public Utilities Commission, 57 S. Ct. 724."

Petitioner respectfully urges that the trial court deprived him of the effective and undivided assistance of his counsel at the time of trial. That ap-

pointed counsel could not effectively represent petitioner in that the appointment was burdened by the court, that is, the trial court appointed the same counsel to represent four other defendants that had been jointly indicted with petitioner.

In re Wright, 9 Cir, 51 F. Supp. 639, 644, His Honor said [11]

"Wright claims the ten year federal sentence is void because the attorney assigned him by the District Court also represented other persons tried with him who had given confessions used at the trial, which confessions involved his participancy in the crime charged. He claims such an attorney would prejudice him with the jury and that he would not be free to conduct a defense with the singleness of purpose the law requires." Glasser v. United States, 315 U.S. 60.*

In accordance with re Wright, supra, 51 F. Supp. 639, 644 petitioner is entitled to the writ of habeas corpus so as to prove his contention that he was deprived of the effective and undivided assistance of counsel at time of trial. The United States Circuit Court of Appeals for the Ninth [12] Circuit failed to pass upon these issues raised from the opinion (51 F. Supp. 639, 644) Johnston v. Wright, 9 Cir., 137 F. 2d 914, 918.

Petitioner respectfully contends and urges that the trial court denied him compulsory process for obtaining witnesses in his favor, which was denial of a right constitutionally guaranteed by the Sixth Amendment to the United States Constitution. The

affidavit incorporated herein as heretofore urged is evidence in and of itself that petitioner was denied compulsory process for obtaining witnesses in his favor. For a case in point see

In Paoni v. United States, 281 F. 801, the Court of Appeals for the Third Circuit held:

> "One of the important guarantees of fair trial, as provided in the Sixth Amendment, is that an accused person shall enjoy the right 'to have compulsory process for obtaining witnesses in his favor. This right includes a reasonable time in which to procure witnesses; and it has been held that refusal by the court to grant a continuance so that certain witnesses could be summoned was an abuse of discretion and a denial of the right guaranteed by the Constitution."

And Hawk v. Olson, supra, the Supreme Court holding:

> "Petitioner contends that his conviction violates the Fourteenth Amendment because of denial at his trial of an opportunity to examine the charge, subpoena witnesses, consult counsel and prepare a defense. Denial of effective assistance of counsel does violate due process."*

Petitioner respectfully contends and urges that the judgment of conviction was void in the beginning and that the trial court was without jurisdic-

tion to proceed to judgment and sentence. Johnston v. Zerbst, supra.

That prior applications have been made to the District Court. Sec. in re Wright, 9 Cir., 51 F. Supp. 639, 644. Another petition in the District Court would be condemned under the ruling in Swihart v. Johnston, 9 Cir., 150 F. (2d) 721, and Price v. Johnston, 9 Cir., 161 F. (2d) 705. That for [13] reasons stated in re Wright, supra, petitioner is entitled to envoke the discretionary power conferred upon the Honorable William Denman, 28 U.S.C.A. Sections 452 et seq.

Wherefore, to be relieved of the said unlawful detention, restrain and imprisonment, as aforesaid, your petitioner prays that this petition for Writ of Habeas Corpus be granted and that your Honor make his order directing the aforesaid James A. Johnston, Warden of the United States Penitentiary at Alcatraz, California, to appear before His Honor at a time and occasion thereat to be set forth to show Cause, if any he have, why the foregoing petition should not be granted and why a Writ of Habeas Corpus should not be issued as here prayed.

Respectfully Submitted,

CECIL L. WRIGHT,
Petitioner pro se.

United States of America,
State of California,
County of San Francisco—ss.

Cecil L. Wright, being first duly sworn, deposes and says that: He is a citizen of the United States of America, by birth, and of legal age; He is the petitioner, named in the foregoing petition for Writ of Habeas Corpus ad Subjiciendum; he has read the same and knows its contents; the same are true and correct.

(Seal) CECIL L. WRIGHT,
Affiant.

Subscribed and sworn to before me this 3rd day of March, 1948.

P. J. MADIGAN,
Associate Warden.

Associate Warden, authorized by the Act of February 11, 1930, to administer oaths. [14]

Records at U. S. Penitentiary, Alcatraz, California, indicate that Cecil L. Wright is a citizen of the United States.

EXHIBIT A

In the District Court of the United States for the Eastern District of Illinois. Wednesday, September 17, 1930.

Present: Honorable Walter C. Lindley, Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN AND TUCK WRIGHT

INDICTMENT VIOLATION OF POSTAL LAWS

1st—Breaking into Post Office 18 USCA 315.

2nd—Stealing Govt. Property (18 USCA) 313.

3rd—Conspiracy.

And now on this 17th day of September, A. D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendant, Robert Raymond, Carl Sanders, Josep Hartman and Tuck Wright, each in person, and by J. D. Allen their attorney. And now comes the defendant, Tuck Wright, by his said attorney, and enters motion for a continuance, which said motion is by the court denied, and now comes the said defendant and enters motion for separate trial, which said motion is by the court denied, and issue being joined, the following named jurors are ten-

dered and accepted to wit: Stephen Gannon, H. R. Boeschen, G. W. Gilliland, Oscar Forth, D. C. Burrow, Sam Wilson, Harry Beard, Mark Wiseman, William Basinger, Charles Tilton, Dan Fritz and J. W. Snider, who are duly sworn to well and truly try the issues joined in this case and a true verdict render according to law and evidence. And after hearing the evidence in the case, the argument of counsel, and the instructions of the Court, the jury retire to consider their verdict, and afterward come into court and for verdict say: "We, the jury find the defendants, Carl Sanders, Tuck Wright, Joe Hartman and (15) Robert Raymond guilty in manner and form as charged in the indictment." And the said defendants being arraigned at the bar of the court for sentence and they having nothing further to say why sentence should not be pronounced against them, it is, therefore considered and adjudged by the Court that the said defendants Robert Raymond, Carl Sanders, Joseph Hartman and [15] Tuck Wright, for the offense by them committed in manner and form as charged in the said indictment and as found by the jury in this case each be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for the period of five years on the 1st count of the indictment, three years on the 2nd count and two years on the 3rd count, from the date of delivery of the said defendants to the Keeper or Warden of the said Penitentiary, said sentences to run and be served consecutively; that they each pay a fine to the United States in the sum of Ten Thousand Dollars,

that execution issue therefor and that the said defendants stand committed to the said Penitentiary until said fines shall have been fully paid.

(It is further ordered by the court that the sentences herein imposed shall begin upon the expiration of the sentences which the said defendants are now serving in the Southern Illinois Penitentiary.)

(Entry made by Clerk of District Court.) (16)

United States of America,
Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A.D. 1930, as fully as the same appears upon the records now in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the Seal of said Court, at Danville in the District aforesaid, this 17th day of September, A.D. 1930.

(Seal) /s/ D. H. REED,
Clerk. [16]

EXHIBIT B

In the District Court of the United States
for the Eastern District of Illinois

Wednesday, September 17, 1947

Present: Honorable Walter C. Lindley, Judge.

No. 11074

THE UNITED STATES

vs.

MONTE CRIST, CECIL WRIGHT, alias TUCK WRIGHT and MARION BOWLES

INDICTMENT

Violation National Motor Vehicle Theft Act
1 Count, Transportation, 18 U. S. C. A. 408.

And now on this 17th day of September, A.D. 1930, comes the United States, the plaintiff in this case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Cecil Wright alias Tuck Wright and Marion Bowles, each in person, and by J. D. Allen, their attorney. And now comes the defendant, Cecil Wright alias Tuck Wright, and by leave of court withdraws his plea of not guilty heretofore entered herein, and instead thereof says that he is guilty in manner and form as charged in the indictment. And now issues being joined as to the defendants, Marion Bowles, and jury being waived, his case comes on for hearing before the court, and after hearing the evidence in the case and the argu-

ments of counsel and being fully advised in the premises, the court finds the defendant, Marion Bowles guilty in manner and form as charged in the indictment. And now the said defendants, Cecil Wright, alias Tuck Wright and Marion Bowles being before the court for sentence and having nothing to say why sentence should not be pronounced against them—It is therefore, considered and adjudged by the court, that the said defendant Cecil Wright alias Tuck Wright, for the offense by him committed in manner and form as charged in the indictment, and as by him confessed, be imprisoned in The United States Penitentiary at Leavenworth, Kansas, for the period of five years, said sentence [17] to run and be served consecutively with the sentence imposed against the said defendant in case No. 11032, and that said defendant be committed to said Penitentiary pursuant to said sentence. And it is considered and adjudged by the court that the defendant, Marion Bowles, for the offense by him committed, in manner and form as charged in the indictment and as found by the court, be imprisoned in The United States Penitentiary at Leavenworth, Kansas, for the period of five years from the date of delivery of the said defendant to the keeper or warden of said Penitentiary, said sentence to begin upon the expiration of the sentence which the said defendant is now serving in the Southern Illinois Penitentiary, and that the said defendant be committed to the United States Penitentiary pursuant to said sentence.

United States of America,
Eastern District of Illinois—ss.

I, D. H. Reed, Clerk of the District Court of the United States for the Eastern District of Illinois, do hereby certify the foregoing to be a true copy of an order made and entered in said Court on the 17th day of September, A.D. 1930, as fully as the same appears upon the records now in my office.

In testimony thereof, I have hereunto set my hand and affixed the seal of said court, at Danville in the District aforesaid, this 17th day of September, A.D. 1930.

[Seal] /s/ D. H. REED,
Clerk.

[Endorsed]: Filed April 23, 1948. [18]

(Here follows petition for writ of habeas corpus ad subjiciendum in Case No. 27833 H, Cecil L. Wright, Petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Respondent, and Exhibits A and B (Commitments in No. 11032 and No. 11074, previously copied), and Order to Show Cause, Return to Order to Show Cause, Memorandum of Points and Authorities, Demurrer to Return on Order to Show Cause, Petition for Writ of Habeas Corpus ad Pro-

sequendum ad Testificandum and Order (Denying Petition and Discharging Order to Show Cause) in the said case and not copied except as to the two Exhibits.

[Endorsed]: Filed April 23, 1948. [19]

[Title of U. S. Court of Appeals and Cause.]

ORDER TO SHOW CAUSE

The petition alleges that petitioner, in September, 1930, was tried by the United States District Court for the Eastern District of Illinois, upon an indictment charging him and three other defendants with breaking into a federal post office and stealing government property in violation of 18 U.S.C. 313 and 315, and with conspiracy to commit such violations, and that the court appointed a single attorney for the four defendants.

The petition further alleges that on the opening of the trial petitioner's attorney moved for a separate trial on the ground that the evidence to be offered on behalf of the attorney's other clients would be highly conflicting with petitioner's evidence of an alibi set forth in petitioner's affidavit there filed. The motion was denied. The attorney also moved for a continuance to procure the witnesses who would testify to establish the alibi, a motion also denied.

The petition further alleges that, as stated in the motion to relieve the attorney from representing

petitioner at that trial, such evidence was offered by the prosecution early in the presentation of its case against the four defendants. This evidence consisted of the statements signed [20] by the three other clients of the attorney, implicating petitioner in the offenses charged.

The single attorney for these four clients thus had in evidence the statements of three of them adverse to the fourth, the petitioner. On the facts alleged in the petition, the professional absurdity of his position is obvious. To the jury he must argue, "As to three of my clients, they are innocent men." At the same time, he must argue for petitioner that "each of my three innocent clients lied when he signed statements implicating Wright," or, "the court may instruct you to ignore the statements of my three clients and hence you must regard them as if they were untrue." If not before, immediately upon the introduction of the statements of the three defendants adverse to the petitioner, he should have had separate counsel, or, if too late for counsel to prepare his defense, a mistrial as to him should have been declared and a separate trial ordered.

There could not be a clearer case of failure to provide counsel which would give his client the "effective" aid of Powell vs. Alabama, 287 U. S. 45, 71, nor the singleness of purpose in an attorney required by Glasser vs. U. S., 315 U. S. 60, 75, 76. If, on the hearing of the order to show cause, the

facts alleged in the petition are established, the petition should be granted.

The petition alleges that the court continued the trial and that the jury brought in a verdict against petitioner and the three other defendants on all three counts of the indictment. The court, on September 17, 1930, sentenced Wright to an aggregate of ten years for the three offenses. On the same day, petitioner, having plead guilty to a charge of violation of the motor vehicle act, 18 USC 408, was sentenced to five years in the penitentiary. These two sentences [21] were to run consecutively but not to commence till the expiration of a sentence he was serving in Joliet Penitentiary.

Petitioner was arrested when he had served the imprisonment portion of his Illinois sentence, but while he was serving the period in which he was released under the Illinois law. He was imprisoned in Alcatraz Penitentiary. Three petitions for habeas corpus were denied, but a fourth, addressed to me, was granted on the ground that his federal sentences had not begun to run. In re Wright, 51 Fed. Sup. 639, a decision affirmed on appeal Johnson vs. Wright, 135 Fed. (2d) 914 (C.C.A. 9)—that is, that court considered and upheld a fourth petition after three had been denied.

Petitioner is thus seen to have served over three years in Alcatraz before his release from his wrongful imprisonment there—lost time to him for executive clemency well may be sought. The time consumed in the presentation of the three denied

petitions contributed largely to this illegal confinement.

On the expiration of his Illinois sentence, petitioner was again imprisoned in Alcatraz Penitentiary on June 25, 1944. The petition alleges that he is entitled to 133 days good time credits and that he was entitled to release from the imprisonment portion of his five year sentence on October 8, 1947. He was thus for the first time entitled to raise in habeas corpus the validity of the ten year sentence above discussed, for no court has power to determine the validity of a consecutive sentence where one is imprisoned on a valid sentence, McNally vs. Hill, 293 U. S. 131, a case followed by a succession of opinions of this court.

In McDonald vs. Johnston, 149 Fed. (2d) 768 (C.C.A. 9), [22] this circuit held at page 769: "The federal courts have no power in a habeas corpus proceeding, once it is shown that in any event the petitioner is presently held legally by his jailor, to determine such questions as the future termination of his sentence. McNally vs. Hill, 293 U. S. 131, 138 et seq., * * * De Maurez vs. Squire, 9 Cir., 121 Fed. (2d) 960, 962 and cases cited."

This holding was of May 21, 1945; yet less than a month later, on June 18, 1945, long before the five year sentence had expired, that court in a casual per curiam, with no finding on the facts of the conflicting interests of petitioner's attorney, held that petitioner's second and ten year sentence

had been after a trial in which he had been duly represented by counsel.

That per curiam refers to a decision of the United States District Court for the Northern District of California No. 23647-S, a decision rendered during petitioner's wrongful first detention. There the district court found that petitioner was legally serving his five year sentence of which the imprisonment portion had not expired. It made no finding of fact concerning the representation by the petitioner's attorney of the three defendants whose interests were so adverse to petitioner's. Without such finding and having found it had no power to act, the court proceeded to state as a conclusion of law "that petitioner was not denied the right of counsel at any time during the course of the proceedings before the trial court" on the trial resulting in the ten year sentence.

Other petitions filed in the district court were denied on the ground that the matter had been disposed of in case No. 23647-S, supra. [23]

Since all these decisions were rendered while the courts were without power to act, and since the decisions in 23647-S and all the cases were without finding on the essential question of the facts as to the dual representation at the trial, I am not impressed with their casual conclusions. I do not think it an abuse of the petition repeatedly to seek a finding stating the facts of the dual representation, the very essence of the case presented by the petitions. I regard it as within my power to con-

sider the petition to me "a power resting in the conscience of the judge, to be exercised in light of the circumstances of the particular case and on grounds which square with reason and justice." Price vs. Johnston, 161 Fed. (2d) 705, 708; c.f. Hawk vs. Olson, 326 U. S. 271, 66 S. Ct. 116, where the Supreme Court upheld Hawk's petition though it states at page 272 it had denied two petitions for certiorari on Hawk's two other habeas corpus proceedings in which the same ground was asserted, and Cochran vs. Kansas, 316 U. S. 255, where the Supreme Court sustained a petition after four petitions, two on the federal and two in the state courts, had been denied.

Petitioner on January 8, 1948, filed a petition in the District Court of the Northern District of California. An order to show cause was issued, but the district court made no finding on the issue tendered of the diverse interests of the attorney representing petitioner. Instead, it relied on the prior decisions in which no finding had been made on that issue.

Wright raised the question here presented, in his petition to me filed in 1942. I there studied the contention here advanced, but refused to pass on it. In re Wright 51, Fed. Sup. 639, 644. Because of my prior study and because of [24] the absence of any finding of the facts on the issue here tendered in any of the dispositions of his prior petitions, in the exercise of my discretion I am making an exception to the practice established in Bowen vs. Johnston, 55 Fed. Sup. 340;

It Is Hereby Ordered that James A. Johnston, Warden of the United States Penitentiary, at Alcatraz Island, State of California, appear before me at 316 Post Office Building, San Francisco, on the 6th day of April, 1948, at the hour of 10 o'clock a.m. of that day, to show cause, if any he has, why a writ of habeas corpus should not be issued herein, as prayed for, and that a copy of this order be served upon the Warden of the United States Penitentiary, at Alcatraz Island, State of California, by mail and that a copy of the petition and this order be served upon the United States Attorney for this District, his representative herein, and that the Warden have with him Cecil L. Wright, there to present his case in propria persona.

Dated March 30, 1948.

WILLIAM DENMAN,
United States Circuit Judge.

[Endorsed]: Filed April 23, 1948. [25]

[Title of U. S. Court of Appeals and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, through Frank J. Hennessy, United States Attorney for the Northern District of California, and for cause why a writ of habeas corpus should not issue herein, shows as follows:

I.

That the person hereinafter called "the petitioner," on whose behalf the petition for writ of habeas corpus is filed, is detained by the respondent, as Warden of the United States Penitentiary, Alcatraz Island, California, under and by virtue of the judgments and sentences of the District Court of the United States for the Eastern District of Illinois, hereinafter called the "trial Court," in the cases of United States of America vs. Tuck Wright, alias Cecil Wright, number 11,032, and the United States of America vs. Cecil Wright, number 11,074, and alias commitments issued in said cases on the 21st day of June, 1944, and telegraphic orders and directives issued at Washington, D. C., on June 17, 1944, and signed respectively by John Q. Cannon, Administrative Assistant to the Attorney General of the United States and James V. Bennett, Director of the Bureau of Prisons of the Department of Justice, ordering and directing the commitment of the petitioner to the United States Penitentiary at Alcatraz Island, California;

II.

That the only issue cognizable in habeas corpus raised by the petitioner, to wit, the alleged denial of the effective assistance of counsel, is similar to that raised and [26] claimed by him in four of his prior petitions, being case number 23647-S Adm., wherein the Court denied the petitioner's discharge by writ of habeas corpus and made findings of fact and conclusions of law adverse to petitioner, and

case number 23546-R, wherein the Court dismissed the petition for writ of habeas corpus on the ground that the facts therein alleged were insufficient on their face to justify the discharge of petitioner, and which judgment of the Court dismissing the petition for writ of habeas corpus in case number 23546-R was affirmed by the Circuit Court of Appeals for the Ninth Circuit, case number 10971 on June 18, 1945 (149 F. (2d) 648, certiorari denied 326 U. S. 786); case number 25110-R, wherein the Court denied the petition for writ of habeas corpus on the ground that the said petition when reviewed in the light of the action taken by the Court in six other prior petitions for writ of habeas corpus showed that the facts therein alleged were insufficient on their face to justify the discharge of the petitioner; and case number 27833-H, wherein the Court on February 27, 1948, denied the petition for writ of habeas corpus on the ground that the issues raised therein had been decided adversely to petitioner in previous actions before the Court and cited the following cases: Wright vs. Johnston, Nos. 23,518-S, 23,611-S, 26,647-S (Admiralty); 23,744 (Denman; 51 F. Supp. 639, affirmed 137 F. (2d) 914; 23,793-G (Admiralty), 49 F. Supp. 748; 23,472 (Denman); 23518-G; 23546-R, affirmed 149 F. (2d) 648; 25,110-R; 25,599 (Denman); 25,688 (Denman); 25,779 (Denman) and 27,185-H);

III.

That the entire record of the proceedings in habeas corpus, number 23647-S Adm., the entire

record in habeas corpus case number 23546-R, the entire record of proceedings in habeas corpus case number 25110-R and the entire record of the proceedings in habeas corpus case number 27833-H, heretofore instituted by the petitioner, are hereby referred to and incorporated herein as part of this Return, as though fully set forth herein.

IV.

That the respondent is informed and believes that petitioner's right to assistance of counsel was not denied him at the time of his appearance before the trial Court and that the petitioner was in fact effectively represented by counsel at the time of his conviction and sentence.

Wherefore respondent prays that the petition for writ of habeas corpus filed herein be denied and the order to show cause, heretofore issued herein, be discharged.

Dated April 6, 1948.

/s/ FRANK J. HENNESSY, JK
United States Attorney,

/s/ JOSEPH KARESH,
Assistant United States
Attorney,
Attorneys for Respondent.

[Endorsed]: Filed April 23, 1948. [28]

PLAINTIFF'S EXHIBIT "B"

(Admitted April 9, 1948)

In the District Court of the United States of America for the Eastern District of Illinois

Criminal No. 11032

UNITED STATES OF AMERICA

vs.

TUCK WRIGHT, alias CECIL WRIGHT

COMMITMENT

Now on this 21st day of June, A.D. 1944, came William W. Hart, United States Attorney and Ray M. Foreman, Assistant United States Attorney and present the petition of the United States of America for an alias commitment against the Defendant Tuck Wright alias Cecil Wright in the above entitled cause and the Court having considered said petition and the records and files in this cause finds:

1. That the allegations contained in said petition are true and correct;

2. That the Defendant Tuck Wright, alias Cecil Wright was heretofore and upon September 17, 1930, convicted of a violation of Sections 88, 315 and 317, of Title 18 of the United States Code and sentenced to five, three and two years in the United States Penitentiary on Counts One, Two and Three respectively of the indictment filed in this cause, said sentence to run and be served consecutively and that said Defendant pay a fine of $10,000 to

the United States; that the service of said sentence begin upon the expiration of the sentence which said Defendant was then serving in the Southern Illinois Penitentiary;

3. That thereafter and on or about November 1st, 1939 said Defendant was released from the Southern Illinois Penitentiary in the State of Illinois, delivered to the United States Marshal for the Eastern District of Illinois and thereafter delivered by [30] said United States Marshal to the United States Penitentiary at Leavenworth, Kansas, from which institution he was subsequently transferred to the United States Penitentiary at Alcatraz, in the State of California;

4. That on or about October 22, 1943, said Defendant was released from said United States Penitentiary at Alcatraz, California by order of the United States Circuit Court of Appeals for the Ninth Circuit, said Court holding in the order granting said release of said Defendant from said institution that said Defendant had not yet begun the service of the sentence heretofore imposed by this Court, which said sentence could begin only after the expiration of the sentence imposed upon him by the Courts in the State of Illinois and subsequent to his discharge from parole by the State of Illinois;

5. That on or about June 16, 1944 the Defendant Tuck Wright, alias Cecil Wright was discharged from the custody of the State of Illinois by the duly authorized officials of the State of Illinois and is now subject to commitment to the custody

of the Attorney General pursuant to the judgment and sentence originally imposed upon him by this Court.

It Is therefore, Ordered and Adjudged by the Court that the Defendant having been found guilty of the violation of Sections 88, 315, and 317 of Title 18 of the United States Code, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of five years on Count One of the indictment herein, three years on the Second Count and Two years on the Third Count of said indictment, said sentences to run and be served consecutively and that he pay a fine of $10,000 to the United States and that said Defendant be further imprisoned until payment of said fine or until said Defendant is otherwise discharged as provided by law.

It is further Ordered that the Clerk deliver a certified copy of this commitment to the United States Marshal or other qualified officer and that the same shall serve as a commitment herein. [31]

Attest a true copy.

(Court Seal)

/s/ WALTER C. LINDLEY,
United States District Judge.

/s/ D. H. REED,
Clerk.

(copied from reverse side)

Alcatraz, California
June 26, 1944

Pursuant to Telegraphic instructions from John Q. Cannon, Administrative Assistant to the Attorney General, dated June 17, 1944, I took into my custody the body of Cecil "Tuck" Wright at Hammond, Ind., on date of June 21, 1944, and committed said Cecil "Tuck" Wright, to the Vermillion County Jail at Danville, Illinois on June 21, 1944.

In compliance with instructions from James V. Bennett, Director of Bureau of Prisons, Dept. of Justice, dated june 17, 1944, on authority of Attorney General, I committed the body of said Cecil "Tuck" Wright to the U. S. Penitentiary, Alcatraz, California on June 25, 1944.

CARL J. WERNER,
U. S. Marshal, Eastern District
of Illinois.

By /s/ CARL J. WERNER,
U. S. Marshal, June 25, 1944.

A true copy.

By .....

Record Clerk, USP, Alcatraz

June 25, 1944 [32]

In the District Court of the United States of America for the Eastern District of Illinois

Criminal No. 11074

UNITED STATES OF AMERICA

vs.

TUCK WRIGHT, alias CECIL WRIGHT

COMMITMENT

Now on this 2nd day of June A.D. 1944, came William W. Hart, United States Attorney and Ray M. Foreman, Assistant United States Attorney and present the petition of the United States of America for an alias commitment against the Defendant Tuck Wright alias Cecil Wright in the above entitled cause and the Court having considered said petition and the records and filed in this cause finds:

1. That the allegations contained in said petition are true and correct;

2. That the Defendant Tuck Wright, alias Cecil Wright was heretofore and upon September 17, 1930, convicted of a violation of Section 408, of Title 18 of the United States Code by plea of guilty entered by him to the indictment in this cause, and sentenced to five years in the United States Penitentiary, said sentence to run and be served consecutively to sentence imposed upon him in case No. 11032 in this Court; that the service of said sentence begin upon the expiration of the sentence which said Defendant was then serving in the Southern Illinois Penitentiary;

3. That thereafter and on or about November

1st, 1939 said Defendant was released from the Southern Illinois Penitentiary in the State of Illinois, delivered to the United States Marshal for the Eastern District of Illinois and thereafter delivered by said United States Marshal to the United States Penitentiary at [33] Leavenworth, Kansas, from which institution he was subsequently transferred to the United States Penitentiary at Alcatraz, in the State of California;

4. That on or about October 22, 1943, said Defendant was released from said United States Penitentiary at Alcatraz, California by order of the United States Circuit Court of Appeals for the Ninth Circuit, said Court holding in the order granting said release of said Defendant from said institution that said Defendant had not yet begun the service of the sentence heretofore imposed by this Court, which said sentence could begin after the expiration of the sentence imposed upon him by the Courts in the State of Illinois, and subsequent to his discharge from parole by the state of Illinois;

5. That on or about June 16th, 1944 the Defendant Tuck Wright, alias Cecil Wright was discharged from the custody of the State of Illinois by the duly authorized officials of the State of Illinois and is now subject to commitment to the custody of the Attorney General pursuant to the judgment and sentence originally imposed upon him by this Court.

It is therefore, Ordered and Adjudged by the Court that the Defendant having been found guilty

of the violation of Section 408, Title 18 of the United States Code, is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for the period of five years, said sentence to run and be served consecutively to the sentence imposed upon him in Case No. 11032 of this Court.

It is further Ordered that the Clerk deliver a certified copy of this commitment to the United States Marshal or other qualified officer and that the same shall serve as a commitment herein.

(Court Seal)

WALTER C. LINDLEY,
United States District Judge.

Attest a true copy.

/s/ D. H. REED,
Clerk. [34]

(Copied from reverse side)

In compliance with instructions from James V. Bennett, Director of Bureau of Prisons, Dept. of Justice, dated June 17, 1944, on authority of Attorney General, I committed the body of said Cecil "Tuck" Wright to the U. S. Penitentiary, Alcatraz, California on June 25, 1944.

By /s/ CARL J. WERNER,
U. S. Marshal, East. Dist.
of Illinois, June 25, 1944.

A true copy.

By .....

Record Clerk, U.S.P. Alcatraz, June 25, 1944.

(Copy) (Two Telegrams)

Western Union

XVC153 41 Govt-Wux Washington DC 17 53 1P
Rapid Werner United States Marshal-
Danville, Ill 1944 June 17 PM 4 47

You Are Authorized And Directed To Proceed Hammond Indiana To Take Custody Of Cecil Wright Under Judgement From Your Court Issued September 17 1930 And Commit Wright To Alzatraz As Directed By Prisons Bureau Take Certified Copy of Judgment With You—

JOHN Q. CANNON,
Administrative Assistant to the
17 1930 Attorney General

(No. 2)

Western Union

C166 13 Govt-CP Washington DC 17 547P
Carl J. Werner U S Marshall
1944 June 17 PM 5 26

Commit Cecil Wright To Alcatraz As Soon As Possible After Taken Into Custody—

JAMES V. BANNETT.

Copied from Original Telegrams:
By /s/ C. W. SUNDSTROM,
Record Clerk, USP, Alcatraz,
Calif. August 4, 1944. [36]

RECORD OF COURT COMMITMENT

Department of Justice
Penal and Correctional Institution
United States Penitentiary
Alcatraz, California

First Name: Cecil Wright. No. 579-AZ.

Alias: "Tuck" Wright.

Color: White. Birth Date: 9-6-07. Age: 36.

True Name: Cecil L. Wright.

Name and number of prior commitments to Fed. Inst.: (55980—Leav. Same offense).

Offense: P. O. Violations—B. & E., Theft and Conspiracy and Dyer Act.

District: E-D-Illinois-Danville.

Sentence: 15 Years (2-5 yrs, 1-3 yrs. & 1-2 yrs., Consecutive). Fine $10,000. Committed: Yes.

Sentenced: Sept. 17, 1930.

Committed to Fed. Inst.: June 25, 1944—Alcatraz.

Sentence begins: June 21, 1944.

Eligible for parole: June 20, 1949.

Eligible for conditional release with good time: July 16, 1954.

When arrested: Sept. 12, 1930.

Where arrested: State Pen., Menard, Ill.

Residence: Hammond, Indiana.

Time in jail before trial: Since arrest.

Rate per mo. good time: 10. Total good time possible: 1800 Days.

Expires full term: June 20, 1959.

Former Com. on Sentence to Other Institutions: No. 9492 & 15386, State Penitentiary, Menard, Il-

linois; No. 6485, State Penitentiary, Joliet, Illinois; No. 5751-A, State Reformatory, Pontiac, Illinois. (See Note-reverse side of sheet.)

Person to be notified in case of serious illness or death: Mrs. Exa Wagner, Sister (relation to prisoner), 2713 162 Place (Address), Hammond, Indiana.

A True Copy.

By C. W. SUNDSTROM,
Record Clerk, USP, Alcatraz,
Calif. [37]

(Note on reverse side of sheet:)

Originally, Wright was taken into custody to begin service of 15 year sentence (instant offense) on October 31, 1939, which date he was released from the Illinois State Penitentiary on parole. Original dates as shown on record of court commitment, were, as follows:

Sentenced: Sept. 17, 1930.

Committed (Leav.): Nov. 1, 1939 (as No. 55980-L)

Sentence Begins: Oct. 31, 1939.

Eligible for parole: Oct. 30, 1944.

Eligible for conditional release with good time: Nov. 25, 1949. With extra good time: Oct. 30, 1949 (credit of 26 days ind. g. t.)

Forfeited good time: Oct. 17, 1941: 30 days industrial good time.

Full Time Expiration: Oct. 30, 1954.

Received in transfer from U.S.P., Leavenworth, at Alcatraz: 7-23-41.

On October 22, 1943, Wright was released from U.S.P., Alcatraz on Court Order, through action of

the 9th Circuit Court of Appeals, which had decided subject's sentence "had not yet begun to run", as he was still on parole by Illinois State Parole authorities. He was furnished transportation to Illinois and when he returned there, was placed on parole by the State authorities, and on or about June 16, 1944, he was discharged from said parole. Subsequently an alias commitment was issued by the U. S. District Court, Eastern District of Illinois, at Danville, on June 21 and June 22, 1944, and the U. S. Marshal of that District ordered to take Wright into custody for commitment to a Federal Penitentiary. He was taken into custody on June 21, 1944, and on June 25, 1944, committed to U. S. Penitentiary, Alcatraz, California.

On his original commitment, Wright served time from October 31, 1939 to October 22, 1943 a period of 3 years, 11 months and 22 days.

[Endorsed]: Filed April 23, 1948. [38]

[Title of U. S. Court of Appeals and Cause.]

ORDER

To the Clerk of the United States District Court of the United States for the Northern District of California:

It appearing from the petition for the writ of habeas corpus, the order to show cause why the writ should not issue, the return to the order and the traverse thereof by the petition accepted as

traverse by the respondent, that due cause exists for the issuance of the writ to the respondent warden, the Clerk of the United States District Court is ordered forthwith to issue the writ of habeas corpus addressed to the repondent warden, ordering the warden to produce the body of the petitioner before me at my chambers, No. 316 Post Office Building, San Francisco, at the hour of ten-thirty o'clock a.m. on Friday, April 9, 1948.

WILLIAM DENMAN,
United States Circuit Judge.

[Endorsed]: Filed April 6, 1948. [39]

United States District Court, Southern Division, Northern District of California

HABEAS CORPUS

The President of the United States of America

To James A. Johnston, Warden, United States Penitentiary, Alcatraz, California

Greeting: You are hereby commanded, that the body of Cecil L. Wright by you restrained of his liberty, as it is said detained by whatsoever names the said Cecil L. Wright may be detained, together with the day and cause of his being taken and detained, you have before the Honorable William Denman, United States Circuit Judge in and for the Ninth Circuit in his Chambers, room No. 316 Post Office Building in the City of San Francisco

at 10:30 o'clock a.m., on the 9th day of April, 1948, then and there to do, submit to and receive whatsoever the said Judge shall then and there consider in that behalf; and have you then and there this writ.

Witness the Honorable

WILLIAM DENMAN,
United States Circuit Judge.

at San Francisco, California, this 6th day of April, A.D. 1948.

C. W. CALBREATH,
Clerk.

[Endorsed]: Filed April 6, 1948. [40]

[Title of Court and Cause.]

RETURN TO WRIT OF HABEAS CORPUS

Comes now James A. Johnston, Warden of the United States Penitentiary, Alcatraz Island, California, through Frank J. Hennessy, United States Attorney for the Northern District of California, and for cause why a writ of habeas corpus should not issue herein, shows as follows:

I.

That the person hereinafter called "the petitioner", on whose behalf the petition for writ of habeas corpus is filed, is detained by the respondent, as Warden of the United States Penitentiary, Alcatraz Island, California, under and by virtue

of the judgments and sentences of the District Court of the United States for the Eastern District of Illinois, hereinafter called the "trial court", in the cases of the United States of America vs. Tuck Wright, alias Cecil Wright number 11,032, and the United States of America vs. Cecil Wright, number 11,074, and alias commitments issued in said cases on the 21st day of June, 1944, and telegraphic orders and directives issued at Washington, D. C., on June 17, 1944, and signed respectively by John Q. Cannon, Administrative Assistant to the Attorney General of the United States and James V. Bennett, Director of the Bureau of Prisons of the Department of Justice, ordering and directing the commitment of the petitioner to the United States Penitentiary at Alcatraz Island, California;

II.

That the trial Court had jurisdiction over petitioner and the offenses alleged in the indictments returned against him in said criminal causes numbered 11032 and 11074;

III.

That respondent is informed and believes, and further [41] alleges, that petitioner's right to assistance of counsel was not denied him at the time of his appearance before the trial Court and that the petitioner was in fact represented by counsel at the time of his conviction and sentence;

IV.

That the return to order to show cause, hereto-

fore filed herein, is hereby referred to and incorporated herein as though set forth in full.

Wherefore respondent prays that the petition for writ of habeas corpus be denied and that the writ of habeas corpus, heretofore issued, be discharged.

Dated April 9, 1948.

/s/ FRANK J. HENNESSY,
United States Attorney,

/s/ JOSEPH KARESH,
Assistant U. S. Attorney.

[Endorsed] Filed April 23, 1948. [42]

Ninth Judicial Circuit of the United States

Before William Denman, Circuit Judge of the Ninth Circuit.

No. 28026

CECIL L. WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden, United States Penitentiary, Alcatraz, California.

FINDINGS OF FACT, CONCLUSIONS OF LAW, OPINION, AND ORDER FOR RELEASE

Wright has presented to me as circuit judge a petition for a writ of habeas corpus, alleging that he is in the custody of the above Warden, who is holding him under a commitment issued by the Dis-

trict Court of the United States for the Eastern District of Illinois on a judgment sentencing him for an aggregate of ten years of successive sentences and a fine of 10,000, for stealing $2.43 from a postoffice in Strasburg, Illinois, breaking and entering the postoffice and conspiracy with three other accused, tried with him, to commit the above offenses.

The petition alleges, and the Warden agrees, that a five year sentence imposed by the same court the same day as the above sentences and included in the commitment has been served as to its imprisonment period.*

The petition alleges that the ten year sentences were given after a trial set and had one day after his arraignment; that the court at arraignment appointed an attorney for both Wright and the three other accused; that the three [43] others had given statements to the government officials accusing Wright of committing the crimes on which the trial so was set; that Wright's defense was an alibi to be proved by two witnesses whose names and addresses he gave the court in an affidavit on the morning of the trial and that the court denied a motion for a continuance to secure them, though he had had an attorney, so embarrassed, for less than a day to secure them; that Wright's attorney, so representing clients with such conflicting inter-

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* This sentence succeeded Wright's service of a sentence in Joliet Penitentiary, Illinois.

ests, moved for a segregation of Wright for a separate trial, which motion the court denied.

The petition further claims that Wright's trial, in which he was represented by an attorney so embarrassed, was with a denial of the right of effective assistance of counsel given him by the sixth amendment to the Constitution, and that the trial one day after arraignment and one day after he first had any assistance of counsel, and then such counsel, is a denial of the due process of law in violation of the fifth amendment.

An order to show cause was issued, issue joined and it was held that the petition stated a cause for the issuance of the writ. The writ was issued and served, return made setting forth the above commitment, the petition stipulated to be a traverse of the return, and hearing had.

At the hearing, it appeared from the record and authorities cited that Wright has made motions in the District Court of the United States for the Eastern District of Illinois respecting the judgment of conviction, long after the term of court in which it was entered. The parties agree that the facts are that these proceedings were not in the nature of coram nobis, and I so find. It was also there [44] agreed that if the ten year sentences were invalid, Wright's petition for release should be granted.

Wright there stated he desired no counsel and would conduct his case propria persona. The Warden was represented by Assistant United States Attorney Joseph Karesh. Stipulated evidence was

introduced and the case argued and submitted. Upon this evidence I make the following

FINDINGS OF FACT

Prior to the time of his arraignment, Wright, without counsel, had been confined in Joliet Penitentiary, Illinois, on a sentence for a state offense. On the 16th of September, 1930, he was taken to the United States District Court in Danville, Illinois, and arraigned with the three other defendants.

The judge there presiding deposes that Wright (a) had no attorney, and (b) had no funds to hire one, and (c) that he had no means of securing one, and I further so find.

None of the other three accused had counsel, and the court appointed an attorney then in the court room, one J. D. Allen, stipulated now to be deceased, to serve in that capacity for all of them. That judge deposes that he "directed the United States Attorney to give Mr. Allen full access to all of the file, disclosing all evidence against the defendants, and the United States Attorney complied with the request."

Though neither Wright nor any of the three had had counsel theretofore, the court nevertheless set the case for trial for September 17, the next day after arraignment.

Allen left the court, went to the office of the United States attorney and there discovered that each of three of [45] his clients had given statements in writing, each (a) charging Wright with the crimes for which he was to be tried the next

day and also (b) confessing their own participancy in the crimes.

The unfortunate Allen, a reputable colored practitioner, thus found himself within a few hours of a trial with three clients accusing Wright, a fourth client, and the likelihood that his duty to Wright could oblige him to tell the jury that: "You must disregard the statements of my other three clients accusing Wright of the crime. These are statements of dishonest men—scoundrels who have sought to charge an innocent man with participating in a crime which they alone committed. You cannot believe men of such character." At the same time, Mr. Allen might well be compelled to argue on behalf of the three that: "You must acquit these men because they are innocent, honorable, law-abiding men who could not possibly have done any of the violent and criminal things with which they are charged. They have pleaded not guilty, and you must believe them."

In the few remaining hours for the preparation of the several defenses of the four men, no reputable member of the legal profession could proceed with the case without the frustrating knowledge he was violating its primary canon—detachment of interest. Conscientious counsel, as Allen is shown to be, so profoundly embarrassed, was not qualified to give efficient representation to any of his clients.

To add to Attorney Allen's confusion and perturbation of mind, he learned from Wright that his defense was an alibi to be established by two witnesses whose names and [46] addresses in Decatur,

Illinois, he was given. All this appeared on a statement given by Wright to the investigating officers and in the possession of the prosecuting attorney when Wright was arraigned. Allen thus had to prepare the cases of three of his clients on the three serious crimes charged and to seek to make some overnight contact with Wright's alibi witnesses at the addresses given. Decatur, the town of their residence, is 73 miles from Danville, the place of the trial.

In this situation, Allen waited till the next morning when the trial began, when he made a motion for a continuance as to Wright to have an opportunity to seek his witnesses for his only and, if true, his sufficient defense. For this motion he had prepared an affidavit signed by Wright setting forth the facts.*

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* "Tuck Wright, one of the above named defendant, makes oath and says that he cannot safely proceed to trial of this cause at the present term of this court on account of the absence of one Glen Rommel and one Mary Rommel both of whom are material witnesses for the defendant in said cause, and whose residence is 713 South Oakland Court, Decatur, Illinois. That this affiant expects to prove by said witnesses, Glen Rommel, and Mary Rommel, the following matters, all of which are material to the issues involved in said cause: to-wit: That this affiant was not in Strasburg, Illinois, on the 9th day of April, 1930, when the post office of the United States at said place was burglarized; that this affiant was severely injured and was in the City of Decatur under the care of one Dr. McGill, and was not at or near the scene of the supposed crime; that all the matters and things which the defendant ex-

The court denied this motion for a continuance. On this, the presiding judge later deposed: "The motion for [47] continuance was denied because I thought that no legal ground for continuance existed. The affidavit disclosed that defendant was evidently aware of the indictment against him as he said that he had attempted to write to two witnesses, but that the authorities at the State Penitentiary did not let his letters go out, but he did not show that from the time he acquired knowledge of the indictment up until the time of the trial, he made any other effort or attempt to get in contact with witnesses or arrange for their presence, or subpoena them. He consulted no lawyer; he wrote no lawyer. He did not write the Judge of the United States Attorney, but waited until the time

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pects to prove by the said Glen Rommel and Mary Rommel are true.

"* * * This affiant further says that he is informed and believes that the issues involved in this cause *was* be controverted, and that the evidence relating to such issues will be highly conflicting, as introduced by the respective parties, and that he knows of no other person or persons than the said Glen Rommel and Mary Rommel by whom he can so fully prove the above matters set forth, and this affiant further says that he expects to and believes that he will be able to procure the attendance and testimony of the said Glen Rommel and Mary Rommel at the next term of this Court.

"And this affiant further says that the said Glen Rommel and Mary Rommel are not absent by the procurement, connivance or consent of this affiant, either directly or indirectly, and that this application is not made for delay, but that justice may be done. (Signed) Cecil Wright Affiant."

of his trial, and then made an application for continuance. I believed he had not shown due diligence. If I erred, it was because I believed that fact."

With the case not at issue till arraignment, Wright could not know before arraignment the date the trial would be set. It was not till arraignment that the federal trial judge could perform his obligation to advise Wright of his right to counsel to prepare his defense.

To meet the situation of the conflict of interest between his three other clients and Wright, Attorney Allen moved for a severance as to Wright, Wright's affidavit having stated: "This affiant further says that he is informed and believes that the issues involved in this cause will be controverted, and that the evidence relating to such issues will be highly conflicting, as introduced by the respective parties." This the court denied, the judge later deposing that: "As to the motion for severance, I thought that inasmuch as these defendants had been indicted together, as co-defendants, inasmuch as they were charged with conspiracy jointly, the Government should not be put to the expense of more than one trial before one jury. I believed that I could adequately protect the rights of each defendant by my charge to the jury, and this I attempted to do, and, in my discretion, therefore I denied the motion." (Emphasis supplied.) [48]

Attorney Allen made no further motion to relieve himself of his dual and conflicting representation, and on September 17 the trial was commenced.

At the trial, what had appeared in the affidavit for severance was further confirmed. The prosecution introduced the statements of Allen's three other clients accusing Wright of the three crimes and also confessing their own guilt. Also was introduced Wright's statement showing his claim of alibi and the names and addresses of his witnesses. The two witnesses to prove the alibi were not procured and the prejudicial inference necessarily arose in the jurors' minds that his failure to produce such clearly exculpating testimony meant there was no such testimony.

As to the statements of the three co-defendants charging Wright with the crimes and also confessing their own participancy therein, the judge deposes that he charged the jury that "no confession was binding on any person other than the one who made it, and that it was not to be considered as evidence against any other defendant," and I further find that he so charged the jury.

There was evidence other than the statements sufficient for a verdit of guilty against Wright.

The jury's verdict of the guilt of Wright and of the three other defendants was rendered that day, and immediately thereupon Wright was given the sentences here in question.

CONCLUSIONS OF LAW

From the above findings of fact as to the conflicting interest represented by Attorney Allen, I conclude that Wright was denied the right to the efficient assistance of counsel given him by the sixth

amendment, and that with a counsel so embarrassed, compelling him to undertake the conflicting defenses in less than 24 hours, and in the same time [49] to seek and procure Wright's witnesses, is a denial to Wright of the due process of law, to which he is entitled under the fifth amendment.

OPINION

The proof of Wright's claims of alibi by the named witnesses at the given, or even later discovered addresses if they had moved, would be a complete defense to the crimes charged against him. Obviously, counsel Allen, representing the conflicting interests of his three other clients, was totally incapable in the few hours before the following morning of the trial to search for and procure their presence, and at the same time prepare the defense of his other clients.

The trial judge decided that Wright had forfeited his right to time to have counsel singly devoted to his interest to procure his witnesses, and that he must go to trial the next day without such witnesses. The reasons he gives constitute a grossly unjust judicial absurdity. Joliet Penitentiary, in which Wright was confined until he was arraigned, is about 100 miles from the district court at Danville. The judge's subsequent deposition states that Wright had no counsel, had no "funds" to procure one and no "means" to procure one. He then states as his reason why Wright, before arraignment, that is, before the case was at issue and when he could not possibly have known the date of

trial, had forfeited his right to secure witnesses with the aid of counsel, that "The affidavit disclosed that defendant was evidently aware of the indictment against him as he said that he had attempted to write to two witnesses but that the authorities at the State Penitentiary did not let his letters go out, but he did not show that from the time he acquired knowledge of the indictment up until the time of the trial, he made any other effort or [50] attempt to get in contact with witnesses or arrange for their presence, or subpoena them. He consulted no lawyer; he wrote no lawyer. He did not write the Judge or the United States Attorney, but waited until the time of his trial, and then made an application for continuance. I believed he had not shown due diligence. If I erred, it was because I believed that fact."

It is an injustice for the court to find Wright without counsel and without money or means to procure one and then give as one of the reasons for the forfeiture of his due process right to procure witnesses that "He consulted no lawyer; he wrote no lawyer."

It is a further injustice to assume from Wright's affidavit as a further fact for forfeiting his right to secure his witnesses that he "did not write the United States Attorney" concerning his alibi. The fact is that the prosecuting attorney had Wright's signed statement stating the alibi defense and the names and addresses of his witnesses, a fact disclosed to the judge at the beginning of the trial.

The only ground left to justify the forfeiture of Wright's right to have his witnesses found and produced is that he did not write to the judge about it, that is, from a prison which the judge states prevented him from writing directly to the witnesses who, he claimed, would establish his innocence. The petitioner in Johnson vs. Zerbst, 304 U.S. 458, 461, also in prison, did not communicate with the trial judge, yet his petition was granted.

In this situation, I hold that Wright, a layman, did not forfeit his right to a counsel singly devoted to his defense, with sufficient time after the case became at issue [51] by arraignment to procure his witnesses. In this I am following the decision of the tenth circuit in Wallick vs. Hudspeth, 128 Fed. (2d) 343 (CCA-10), a habeas corpus proceeding where the prisoner was granted the writ and returned for a new trial on facts essentially like those here.

In Hawk vs. Olson, 326 U.S. 271, a habeas corpus proceeding, the writ was held to be sustainable where it be shown "that no effective assistance of counsel was furnished in the critical time between the plea of not guilty and the impaneling of the jury." (Emphasis supplied.) Id. p. 278. There counsel was appointed on the day of trial and no continuance granted. It is no distinction that here the professionally hamstrung Allen was appointed the day before, with the witnesses he was to procure in a town 73 miles away and he required, at

the same time, to prepare the defense of the three others.

The trial judge contends that his conduct, if wrongful, is mere error. Of course, Allen could have appealed, but so Hawk's attorney could have appealed but did not. Nevertheless, the Hawk case holds such claimed fundamental error denying constitutional rights may be adjudicated in a habeas corpus proceeding.

In the habeas corpus proceeding of Johnson vs. Zerbst, 304 U.S. 458, the court held that as soon as the accused is deprived of counsel, the court loses jurisdiction to proceed with the case, stating: "If the accused, however, is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment [52] stands as a jurisdictional bar to a valid conviction and sentence depriving him of his life or his liberty. A court's jurisdiction at the beginning of trial may be lost 'in the course of the proceedings' due to failure to complete the court—as the Sixth Amendment requires—by providing counsel for an accused who is unable to obtain counsel, who has not intelligently waived this constitutional guaranty, and whose life or liberty is at stake. If this requirement of the Sixth Amendment is not complied with, the court no longer has jurisdiction to proceed. The judgment of conviction pronounced by a court without jurisdiction is void, and one imprisoned thereunder may obtain release by habeas corpus."

Citing the Zerbst case, the Supreme Court in Glasser vs. United States, 315 U.S. 60, states at page 70: "Even as we have held that the right to the assistance of counsel is so fundamental that the denial by a state court of a reasonable time to allow the selection of counsel of one's own choosing, and the failure of that court to make an effective appointment of counsel, may so offend our concept of the basic requirements of a fair hearing as to amount to a denial of due process of law contrary to the Fourteenth Amendment, Powell v. Alabama, 287 U.S. 45, so are we clear that the 'assistance of counsel' guaranteed by the Sixth Amendment contemplates that such assistance be untrammeled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. If the right to the assistance of counsel means less than this, a valued constitutional safeguard is substantially impaired."

In that case, Glasser, an attorney, indicted, as was Wright, for conspiracy, had another attorney to represent [53] him. The court appointed that attorney to represent a co-conspirator having an interest opposed to Glasser's. As with Wright, Glasser did not himself object. There was not, as here, a motion to segregate Glasser's trial. In that situation, the court at page 71 stated: "The court made no effort to reascertain Glasser's attitude or wishes. Under these circumstances, to hold that Glasser freely, albeit tacitly, acquiesced in the appointment of Stewart is to do violence to reality and to condone a dangerous laxity on the part of the

trial court in the discharge of its duty to preserve the fundamental rights of an accused." (Emphasis supplied.)

Concerning the effect in a conspiracy trial of appointing one attorney for two persons of diverse interests, the court's condemnation states, at page 75:

"To determine the precise degree of prejudice sustained by Glasser as a result of the court's appointment of Stewart (Glasser's attorney) as counsel for Kretske is at once difficult and unnecessary. The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice calculations as to the amount of prejudice arising from its denial. Cf. Snyder v. Massachusetts, 291 U.S. 97, 116; Tumey v. Ohio, 273 U.S. 510, 535; Patton v. United States, 281 U.S. 276, 292. And see McCandless v. United States, 298 U.S. 342, 347. Of equal importance with the duty of the court to see that an accused has the assistance of counsel is its duty to refrain from embarrassing counsel in the defense of an accused by insisting, or indeed, even suggesting, that counsel undertake to concurrently represent interests which might diverge from those of his first client, when the possibility of that divergence is brought home to the court. In conspiracy cases, where the liberal rules of evidence and the wide latitude accorded the prosecution may, and sometimes do, operate unfairly against an individual defendant, it is especially important that he be given the benefit of the undivided assistance of

his counsel without the court's becoming a party to encumbering that assistance. Here the court was advised of the possibility that conflicting interests might arise which would diminish Stewart's usefulness to Glasser. Nevertheless Stewart was appointed as Kretske's counsel. Our examination of the record leads to the conclusion that Stewart's representation of Glasser was not as effective as it might have been if the appointment had not been made. [54] We hold that the court thereby denied Glasser his right to have the effective assistance of counsel, guaranteed by the Sixth Amendment. This error requires that the verdict be set aside and a new trial ordered as to Glasser."

No divergence of interest more clearly could have been "brought home to the court" than did the inculpatory statements of Attorney Allen's three other clients. At the moment of their introduction in evidence, Allen becomes disqualified as Wright's attorney and he, in effect, had none. Then if not before, the court lost jurisdiction to proceed as stated in Johnson vs. Zerbst, supra. The trial judge's statement that he "thought that * * * inasmuch as they were charged with conspiracy jointly, the government should not be put to the expense of more than one trial before one jury" (emphasis supplied), in defiance of the Glasser case, is typical of the court's attitude. "Expense" is no factor in determining the accused's right of counsel.

So, also, is the statement that he "could adequately protect the rights of each defendant by my charge to the jury." No charge to the jury could

relieve Attorney Allen of his embarrassment when he learned a few hours before trial of his conflicting professional duties and the impossibility, before the next morning, of obtaining the witnesses to testify to Wright's alibi. This is even assuming that the court had instructed the jury clearly, not only that the confession portions of the three statements were to be disregarded, but also the statements implicating Wright.

It is my opinion that the court lost jurisdiction to proceed on the denial of the motion for a continuance. If it had not lost jurisdiction then, it was lost as soon as the conflicting statements were introduced into evidence and it became apparent that either the motion for a severance should be [55] granted, or that a separate attorney should be appointed for Wright with a continuance adequate for such separate attorney to prepare his case.

FURTHER FINDINGS OF FACT

I further find that after June 21, 1947, when Wright had served the imprisonment portion of a sentence of five years to Alcatraz Penitentiary, on January 8, 1948, Wright filed with the United States District Court of the Northern District of California, in case No. 27833-H, the same petition as here filed. That court denied the petition and discharged an order to show cause, not on the merits of the petition. Instead it stated: "Petition for Writ of Habeas Corpus having been briefed and submitted for decision, and it being noted by the

court that the issues raised by the petition have been decided adversely to petitioner in previous actions before this court.'"*

I further find that prior thereto Wright filed in the district court of the Northern District of California two other petitions, that is, both filed prior to his service of the above five year sentence, when the court had no power to consider them.

In the first of these, case No. 23,647-S, on a similar petition filed on March 28, 1942, that court found that the imprisonment portion of the above five year sentence had not been served. Then, having found itself without jurisdiction to adjudicate the validity of the instant sentence, on the same facts as here presented that court purported to make findings relative to its validity. In them is no finding on [56] the ultimate fact of the diverse interest represented by Attorney Allen, and no finding of probative facts remotely suggesting the presence of this issue. Nevertheless, the court stated as a "conclusion of law" that "petitioner was not denied the right of assistance of counsel at any time during the course of the proceedings, and was there duly represented by counsel."

Succeeding this, the same petition was filed in Case 23456-R on September 18, 1944. It showed on its face the pendency of the above five year

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* That is to say, though none of the courts had the power to determine the issue of the validity of the ten year sentence, the doctrine of res judicata by their decisions was applied in this habeas corpus proceeding.

sentence. Relief was denied on the ground that facts alleged in the petition "are insufficient on their face to justify the discharge of the petitioner." That case was appealed and decided on June 18, 1944. Within a month prior thereto, that circuit court decided the case of McDonald vs. Johnson, 149 Fed. (2d) (CCa-9) 768, in which it held at page 769, concerning its power to adjudicate non-validity of a sentence where another is being served: "The federal courts have no power in a habeas corpus proceeding, once it is shown that in any event the petitioner is presently held legally by his jailor, to determine such questions as the future termination of his sentence. McNally v. Hill, 293 U.S. 131, 138 et seq., * * * De Maurez v. Squire, 9 Cir., 121 Fed. (2d) 960, 962, and cases cited."

Though without power to determine the merits of Wright's two contentions respecting his ten year sentence, that court, in a casual per curiam of a single paragraph based upon the decision in the first case 23647, affirmed the district court. Wright vs. Johnston, 149 Fed. (2d) 648. The opinion does not mention the issue of the conflicting [57] interests of Allen's clients nor the single day in which Allen was to prepare the defenses of his three other clients and procure the witnesses to prove Wright's alibi.

I further find that it is not true that nine petitions presenting these issues have been filed. There are but three, the one since the imprisonment portion of the five year sentence was served and the two

others above stated, decided without power to consider such issues. Wright filed other petitions, but they concern entirely different issues.

FURTHER CONCLUSIONS OF LAW

From these findings concerning these three cases, I conclude that Wright has never been tried in this circuit in a manner legally considering or disposing of his contentions that he has been denied the efficient assistance of counsel or given any time after arraignment to prepare his defense. In this connection it should be noted that in Hawk vs. Olson, 326 U.S., at page 272, Hawk had applied for and been refused the writ, three times by the federal courts and at least once by a state court.

The unfortunate result here arises from the overburdening of my brethren within reach of Alcatraz Penitentiary by the flood of petitions without merit and often perjured. It is only because of the exceptional circumstances here shown and my prior familiarity with his contentions prematurely made In re Wright 51 Fed Sup 639, 633, that I have made an exception to the practice stated in my opinion in Bowen vs. Johnson, 55 Fed Sup 340, and entertained Wright's petition. [58]

ORDER

It is ordered that Wright's petition is granted and that the Warden deliver Wright to the United States District Court for the Eastern District of Illinois for appropriate proceedings therein. It is further ordered that such delivery shall be delayed

for ten days. If the Warden shall not appeal within that time, the Warden shall forthwith so deliver Wright to that court.

WILLIAM DENMAN,
United States Circuit Judge
for the Ninth Circuit.

[Endorsed]: Filed April 23, 1948. [59]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT COURT OF APPEALS

Notice is hereby given that James A. Johnston, Warden, of the United States Penitentiary, Alcatraz, California, the respondent in the above-entitled proceedings, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the order and opinion of the Honorable William Denman, United States Circuit Judge for the Ninth Judicial Circuit, discharging the petitioner, made and entered in the above-entitled action, on April 23, 1948.

Dated April 23, 1948.

/s/ FRANK J. HENNESSY,
United States Attorney,
/s/ JOSEPH KARESH,
Assistant United States
Attorney,
Attorneys for Respondent.

[Endorsed]: Filed April 23, 1948. [60]

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor,

It Is Hereby Ordered that the respondent-appellant herein may have to and including the 22nd day of July, 1948, to file the record on appeal herein in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated June 1st, 1948.

LOUIS E. GOODMAN,
United States District Judge.

[Endorsed]: Filed June 1, 1948. [61]

[Title of U. S. Court of Appeals and Cause.]

DESIGNATION OF CONTENTS OF RECORD ON APPEAL UNDER RULE 75(a)

The undersigned designates the following to be contained in the record on appeal:

1. Petition for Writ of Habeas Corpus.
2. Order to Show Cause.
3. Return to Order to Show Cause.
4. Respondent's Exhibit "B."
5. Order for Issuance of Writ of Habeas Corpus.
6. Writ of Habeas Corpus.
7. Return to Writ of Habeas Corpus.

8. Findings of Fact, Conclusions of Law, Opinion and Order for Release.

9. Reporter's Transcript of April 9, 1948, and all Stipulations, Exhibits, Documents and Transcripts therein mentioned.

10. Notice of Appeal. [62]

11. Order Extending Time to Docket, filed June 1, 1948.

12. Order Extending Time to Docket, filed July 16, 1948.

13. This Designation of Contents of Record on Appeal, under Rule 75(a).

14. Clerk's Certificate.

/s/ FRANK J. HENNESSY,
United States Attorney,

/s/ JOSEPH KARESH,
Assistant United States Attorney,
Attorneys for Respondent-Appellant.

[Endorsed]: Filed July 19, 1948. [63]

In the District Court of the United States for the Northern District of California, Southern Division.

Before Hon. William Denman, Judge.

No. 28026

CECIL WRIGHT,

Petitioner,

vs.

JAMES A. JOHNSTON, Warden United States Penitentiary, Alcatraz, California,

Respondent.

Friday, April 9, 1948
2:00 o'clock p.m.

Appearances: In Personam: Cecil Wright. For Respondent: Joseph Karesh, Esq., Assistant U. S. Attorney.

Mr. Karesh: For the record herein it should be noted that the petitioner has not requested counsel, nor does he desire to have counsel appointed to represent him in these habeas corpus proceedings.

It is stipulated that there may be read into the record the contents of a telegram from the United States Attorney for the Eastern District of Illinois to the United States Attorney for the Northern District of California, dated April 8, 1948

"Re Cecil Wright Alcatraz Defendant's Attorney J. D. Allen Dead"

It is stipulated by and between the parties that

if the ten year sentence imposed by the trial courts in Criminal Cause No. 11,032 is void, the petitioner is now entitled to [64] his release from the custody of the respondent inasmuch as with good time credits now accrued, he has served the imprisonment portion of the five-year sentence imposed against him in Criminal Cause No. 11,074.

It is stipulated that the signature of the respondent to the return to the writ of habeas filed on his behalf is hereby waived and the signatures of the attorneys for the respondent, Frank J. Hennessy, United States Attorney for the Northern District of California, and Joseph Karesh, Assistant United States Attorney for the Northern District of California, are sufficient.

It is stipulated that the petition for writ of habeas corpus is hereby deemed the traverse to the return to the writ of habeas corpus.

It is stipulated that there may be received in evidence as Respondent's Exhibit B herein the following document so marked.

It is stipulated that this case may be submitted without any further testimony being offered or documents offered on the stipulations on file herein, on the pleadings on file herein, Exhibit B above-mentioned, and the evidence and exhibits received in the case of Cecil Wright vs. James A. Johnston, in the District Court of the United States for the Northern District of California, in case No. 23,-647-S, consisting of the following:

Transcript of testimony before Judge A. F. St.

Sure, under date of June 27, 1942, and May 29, 1942, and filed with that court on November 16, 1942.

Deposition of the trial judge, Walter C. Lindley, with attached exhibits, taken on July 23, 1942, in Vermillion County, Illinois.

Deposition of Harold Baker taken on July 29 1942, at East St. Louis, Illinois.

Documents referred to as Respondent's Exhibit A in [65] proceedings 23,647 as aforesaid.

It should be noted that with the exception of the transcript of testimony above mentioned the documents above-referred to, received in evidence in case 23647-A as aforesaid, are to be found not only in the record of case 23647-S on file with the clerk of the said courts, but also in the printed transcripts of record in the case entitled, "James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Appellant, vs. Cecil Wright, Appellee, C.C.A. 9, No. 10,331, at pages 234 through 307.

It should be further noted that an affidavit filed by petitioner with the trial court on September 17, 1930, and found in the transcript of testimony in the habeas corpus proceedings No. 23,647 as aforesaid, is likewise found in the transcript of the record in the case of Johnston vs. Wright, C.C.A. 9, No. 10,331, supra, at pages 110 through 112.

It is stipulated that none of the colloquy between counsel and between the Court and counsel and the oral arguments made by the parties on April 6,

1948, the date on which the petitioner appeared in response to an order to show cause, and on April 9, 1948, the date the petitioner was brought before the court in response to writ of habeas corpus heretofore issued, need be transcribed.

It is further stipulated that the matter may be deemed submitted without any written memorandum being filed by either of the parties herein, it being noted that the court made a list of the authorities cited by the parties during the course of the oral argument.

Those stipulations are correct and what I have read is correct, Mr. Wright?

Mr. Wright: That is agreeable, yes.

Mr. Karesh: The case is now submitted, your Honor.

The Court: Submitted.

Mr. Karesh: And the petitioner is remanded to the custody [66] of the respondent?

The Court: Yes.

CERTIFICATE OF REPORTER

J. L. Sweeney, Official Reporter, certify that the foregoing four pages is a true and correct transcript of the matter therein contained as reported by me and thereafter reduced to typewriting to the best of my ability.

J. L. SWEENEY.

[Endorsed]: Filed April 23, 1948. [67]

In the Southern Division of the United States District Court, in and for the Northern District of California.

Before Hon. A. F. St. Sure, Judge.

No. 23647-S

CECIL WRIGHT,

Petitioner.

vs.

JAMES A. JOHNSTON, Warden United States Penitentiary, Alcatraz, California,

Respondent.

Friday, May 29, 1942

Counsel appearing: For Petitioner: Cecil Wright, in Propria Personam. For Respondent: A. J. Zirpoli, Esq., Ass't U. S. Att'y.

The Court: Proceed.

Mr. Zirpoli: Respondent respectfully asks leave to file return to the writ heretofore issued, and copy has been given to the Petitioner.

Respondent is ready, and the Petitioner is here.

The Court: You are Mr. Wright?

Mr. Wright: Yes, sir.

The Court: You are appearing on your own behalf?

Mr. Wright: Yes, sir.

The Court: Do you wish an attorney to represent you?

Mr. Wright: Yes, I would like to have an at-

torney to represent me in only a part of the petition, your Honor. In respect to the making of an application for a writ of habeas corpus, as set forth, I was denied counsel at the trial. Depositions should be taken, and I would like to have an attorney appointed by this Court for the purpose of taking those depositions. That applies to Point 1 of my application; but in no way would it alter Points 2 and 3 of my application.

The Court: I would not like to ask an attorney to represent you only in part of your case. You just stated that you would [68] like to have the assistance of some attorney, but some portions of the case you wish to conduct, yourself.

Mr. Wright: I have three points in my writ of habeas corpus.

The Court: What is the first point?

Mr. Wright: That I was denied counsel.

The Court: Do you feel you are capable to present this matter to the Court without the assistance of an attorney?

Mr. Wright: On points 2 and 3, yes.

The Court: Why do you need an attorney for Point 1?

Mr. Wright: For the reason that I believe that before the Court determines whether I was denied effective assistance of counsel, it will be necessary to take depositions in the case.

The Court: Have you any money with which to employ an attorney?

Mr. Wright: No, sir.

The Court: I see Mr. O'Connor in court. He has kindly aided many men in situations like yours. I don't know whether he would be willing to give you some assistance or not.

Mr. O'Connor: I am quite willing to proceed, but I don't know what the situation is here.

The Court: On the first point he mentions, perhaps you could assist him in that. You may proceed, then, Mr. Wright.

Mr. Wright: Your Honor, on September 17, 1930, I was sentenced by the United States District Court for the Eastern District of Illinois to be imprisoned in the United States Penitentiary at Leavenworth, Kansas, for a term of fifteen years.

The Court: With what were you charged?

Mr. Wright: I was charged with burglary, larceny, and conspiracy on one indictment, and National Motor Vehicle Theft Act, in the second indictment.

The Court: Did you have a trial?

Mr. Wright: Yes.

The Court: That is, you had a trial before a jury?

Mr. Wright: Yes.

The Court: You were represented by counsel?

Mr. Wright: The Court appointed a counsel over my objections. My objections were that it would be impossible for one [69] attorney to defend five defendants on trial, because of conflicting interests between myself and the other co-defendants; That counsel would not be able to cross-ex-

amine the witnesses without hurting or doing harm to one of the other defendants on trial.

The Court: The statement you now make is addressed to the first point?

Mr. Wright: To the first point, yes.

The Court: As to that first point, you think it probably will be necessary to take some depositions in the East to support the charges you have made, is that right?

Mr. Wright: It wouldn't be necessary for depositions unless the court or respondent would be willing to concede petitioner the point. I have certified copies of the records of the court, also, and I believe the Respondent has them, too. It clearly shows in the judgment that this one counsel was appointed to represent five men on trial.

The Court: All charged with the same offense?

Mr. Wright: Well, no.

The Court: Have you a copy of the indictment filed with your petition?

Mr. Wright: It is attached with Exhibit A to my writ of habeas corpus.

The court forced the appointment of a colored attorney. I didn't want a colored attorney to represent me in the trial.

The Court: Did you state your objections to the Court?

Mr. Wright: I did, in an affidavit for continuance.

The Court: Filed at the time, or before the time of trial?

Mr. Wright: Yes, prior to the trial.

The Court: Have you a copy of the affidavit attached to your petition?

Mr. Wright: No, sir; I couldn't obtain an affidavit from the trial court. I wrote the trial court and asked the trial court to furnish me with certified copies of the affidavits for continuance and for separate trial; and they wrote and told me there were no records to that effect. But, I believe, in the judgment of the court it states I made a motion for continuance, and motion for continuance was by affidavit, not just [70] an oral motion. In that I stated I wanted ten days to correspond with my mother and obtain money to employ a lawyer of my own choice. That affidavit was denied; the motion for continuance was denied in court on September 17, 1930.

There was nothing I could do about it. I was in the custody of the Marshal, and I had to proceed to trial, and I believe that is an infringement of my constitutional right, to force me to trial without a continuance, when the continuance was also for the purpose of obtaining witnesses in my favor. The prosecution had three months to prepare for trial, and I never had any such time.

The Court: Didn't you have the same time as the Government?

Mr. Wright: No, I was incarcerated in the penitentiary in Southern Illinois at the time. The Eastern District of Illinois assumed jurisdiction over my person first, and the Marshal of the Eastern

District, without consent of the Court, loaned me to the State Sheriff for the purpose of the trial.

The Court: In the State Court?

Mr. Wright: In the State Court.

The Court: Were you tried in the State Court?

Mr. Wright: I was tried in the State Court, and he had exclusive custody and control over me at all times.

The Court: The Sheriff?

Mr. Wright: The United States Marshal.

The Court: The United States Marshal. Were you convicted in the State Court?

Mr. Wright: I was convicted in the State Court and sentenced to not less than one year and no more than my natural life.

The Court: Did you serve that time?

Mr. Wright: No, 52 days only; and the Marshal came and asked the Warden of the State Prison to release me to his custody for trial in the Federal court.

The Court: That was done? At any rate, you were taken back by the Marshal to the District Court, and this trial took place that you have described. [71]

Mr. Wright: Yes.

The Court: Who was the judge? What was the Judge's name?

Mr. Wright: Judge Walter C. Lindley. At the time he imposed sentence on me he was not familiar with the fact that I was serving an indeterminate sentence in the Illinois State Penitentiary.

The Court: I don't think, Mr. Wright, that would make any difference. You were within the jurisdiction of the United States Court.

Mr. Wright: But is it possible, your Honor, that a Marshal can loan a prisoner for the purpose of doing time?

The Court: Of course, we will probably ascertain the facts later on, but I don't know how it came about that the Marshal was able to secure you from the State at this time,—

Mr. Wright: Not to interrupt, your Honor, but the Marshal first arrested me pursuant to a bench warrant after indictment. The United States Marshal apprehended me first. There were no State indictments existing at that time.

The Court: The United States Marshal arrested you first. You were then arrested by the State authorities, tried in the State Court, sent to the State Prison. The Marshal went to the State prison and obtained custody and took you to the United States District Court.

Mr. Wright: The Marshal of the Eastern District of Illinois was commanded to deliver me as soon as possible to the United States Penitentiary at Leavenworth, Kansas.

The Court: You were tried in the United States Court, and you went to prison on the sentences imposed by the United States Court?

Mr. Wright: That is right.

The Court: And you have never finished your State Prison term?

Mr. Wright: No, I was paroled.

The Court: You were paroled?

Mr. Wright: Yes; but when one sovereignty takes jurisdiction, that means—

The Court: I doubt very much if the United States Court [72] would worry about that, as long as they had custody and control of you. Perhaps the State may have wrongfully surrendered jurisdiction to the United States Court; but when the United States Court once got jurisdiction in the case I don't think it would make any difference what happened in regard to the sentence imposed upon you in the State Court, nor would it make any difference how the marshal got you.

Mr. Wright: I would say no, it wouldn't make any difference how they got me, but it would make some difference when my sentence started.

The Court: What do you mean, "It would make some difference when sentence started"?

Mr. Wright: After I left the Court, the Clerk of the Court entered provisions that my Federal sentence would start on the expiration of my State sentence. Now, your Honor, the term didn't expire; I was paroled.

The Court: What was the sentence of the Court?

Mr. Wright: The sentence of the Federal Court?

The Court: Yes.

Mr. Wright: Imprisonment in the United States Penitentiary at Leavenworth, Kansas, for a period of five years on the first count, for a period of three years on the second count, and for a period of two

years on the third count, from the time of delivery to the said Penitentiary. The sentences would run consecutively; and I was fined $10,000.

The Court: All right. How long did you serve in the State Prison?

Mr. Wright: Nine years, one month, and thirteen days.

The Court: After you served your sentence in the State Penitentiary, you were then returned to the custody of the United States Marshal and put in the Federal Penitentiary. How long have you been in the Federal Prison?

Mr. Wright: Since October 31, 1939.

The Court: How long have you been in Alcatraz?

Mr. Wright: About ten months.

The Court: Have you made application before for writ of habeas corpus? [73]

Mr. Wright: I made two prior applications for writ of habeas corpus, but on prior applications I never set forth lack of effective assistance of counsel.

The Court: Do you have any attorney in Illinois?

Mr. Wright: No, sir; only what I know myself, and that is not too much.

The Court: Is there anything further you wish to say to me about this first point?

Mr. Wright: I believe I better have depositions taken of the trial court to show that the trial court refused the right of effective assistance of counsel. I believe that right was denied me by the trial court.

The Court: Whose deposition do you want to take?

Mr. Wright: I wish to take the deposition of the Judge of the United States District Court.

The Court: Judge Lindley?

Mr. Wright: I would like to make one more statement: In 1935 while I was under incarceration in the State Prison, I wrote to Judge Walter C. Lindley and asked him what steps and what proceedings I could take to set aside conviction in the Federal Court, and Judge Lindley wrote back and stated that he had no power or no authority to give me any legal advice. He also stated in there he lost jurisdiction of the Court after my sentence had begun.

The Court: In the State Penitentiary?

Mr. Wright: He was under the impression my sentence was running at the time. Of course, this has all been called to Judge Lindley's attention, and after I was received at the United States Penitentiary at Leavenworth, Kansas, he wrote a letter, as I previously stated, and advised that he had no jurisdiction over the case after my sentence began to run. I think those records, if produced in court by deposition, would show exactly the same thing.

The Court: Mr. Zirpoli, we are on this first point.

Mr. Zirpoli: Your Honor, I will send for certain records. I want to determine what the testimony would be, because the Government might want to take depositions, too. He makes the contention

that something was added subsequently, and I want to [74] get the record to see when that appeared.

The Court: Judge Lindley is a very good lawyer.

Mr. Wright: Judge Lindley is a very good judge, and I would like to talk to him, but I am 2000 miles away from him. I believe if my case had been reopened, the trial court—

The Court: In what city were you tried?

Mr. Wright: In Danville, Illinois.

The Court: That is Judge Lindley's home town. Was the offense committed in Danville?

Mr. Wright: No, in the Eastern District of Illinois.

The Court: As to this first part, Mr. O'Connor, you heard what has been said here by Mr. Wright, Mr. Zirpoli, and the Court?

Mr. O'Connor: Yes, your Honor.

The Court: Would you aid this defendant in ascertaining the facts?

Mr. O'Connor: Yes, your Honor, I suggest that Mr. Zirpoli could have the depositions of the Judge and the Clerk taken.

Mr. Zirpoli: I might possibly desire to take the deposition of the United States Attorney, or anyone else.

The Court: Yes. As to the other points you have here, are you willing to submit them on briefs? There is not any testimony that needs to be taken, as far as the other points are concerned?

Mr. Wright: Not as far as the other points are concerned. I think now I will let Mr. O'Connor

prepare the whole case, but I would like to have Points 1, 2, and 3 argued.

The Court: He can do that orally, or by briefs —either one.

Mr. Wright: That would be for him to consider; that is after the depositions are taken in Illinois and the following hearings had here.

The Court: Yes.

Mr. O'Connor: May I make a suggestion that the matter go over four weeks?

Mr. Zirpoli: Yes, that is all right.

Mr. O'Connor: In the meantime, I will go over to Alcatraz [75] and talk to the prisoner.

Mr. Zirpoli: The Petitioner has spoken to the Court primarily in the discussion of Point No. 1.

The Court: Yes.

Mr. Zirpoli: I want to know if he wants that entered in the record in support of his petition.

The Court: If it is necessary after the depositions are taken, if Mr. O'Connor thinks it is necessary, Mr. Wright will be brought back here to give testimony under oath.

Mr. O'Connor: I think that will be necessary, because of the fact that there is no evidence in the record to sustain his contention.

The Court: I suppose you can arrange, Mr. Zirpoli, with Mr. O'Connor as to what depositions you wish to take. There may be others than those that have been mentioned here.

Mr. Zirpoli: I wanted to ascertain just what the facts are, myself. I want to make another comment.

I understand there is a contention made that you were denied the use of process for securing witnesses on your own behalf.

Mr. Wright: Yes.

Mr. Zirpoli: Was there any objection made to the claims for continuance on your behalf?

Mr. Wright: Yes.

Mr. Zirpoli: And there was a direct objection to the Court, itself, as to counsel appointed for you?

Mr. Wright: Yes.

Mr. O'Connor: I understand that he claims he was brought into court and asked for continuance on the ground he wanted to secure counsel, of his own choosing.

The Court: Is it fully understood now?

Mr. O'Connor: Yes, your Honor.

The Court: This matter will go over, then until June 26th.

[Endorsed]: Filed Nov. 16, 1942. [76]

[Title of District Court and Cause.]

Saturday, June 27, 1942, 11:00 o'clock a.m.

Before Hon. A. F. St. Sure, Judge.

Appearances: For Petitioner: James B. O'Conner, Esq., Cecil Wright, In propria person. For Respondent: Thomas C. Lynch, Esq., Ass't U. S. Att'y.

The Clerk: Wright v. Johnston.

Mr. O'Conner: May it please your Honor, in this matter the petitioner has filed a motion that I be relieved as his counsel. At this time I ask that motion be granted.

The Court: What is the reason for requesting that Mr. O'Connor be removed?

Mr. Wright: Your Honor, petitioner would like to present his own case for the reason that taking depositions further in Illinois will cause a considerable delay, maybe two or three months, and I have no objection to Respondent taking depositions and a delay of thirty days, maybe, for the Respondent to take the depositions, but I feel I know my case; I would like to present it, myself.

The Court: You feel you are able to present your case without the assistance of Mr. O'Connor?

Mr. Wright: Yes.

The Court: Is that the reason you are asking—

Mr. Wright: Yes.

The Court: To be permitted to conduct your own case? [77]

Mr. Wright: Yes.

Mr. O'Conner: So far as I know from my conversations with the Petitioner, I don't think there is any objection to me, personally. Is that true, Mr. Wright?

Mr. Wright: No, there is no objection to Mr. O'Conner, personally. I would like to present my own case.

The Court: You don't wish me to appoint anyone else in his place?

Mr. Wright: No.

The Court: Very well, Mr. O'Conner, you may withdraw.

Mr. O'Conner: Thank you, your Honor.

Mr. Lynch: The situation appears to be this,

your Honor, a reading of the last pleading which has been filed by the petitioner, here, apparently has three points, one having to do with his good time, which, of course, may be submitted to the Court on the record of the Petitioner, and all questions of double jeopardy, which will be a question of law, can be submitted on the record, and then a point which has become a new point now by reason of the decision in the Glasser case, that because of the counsel being appointed, I believe, to represent other defendants—is that correct?

Mr. Wright: Yes.

Mr. Lynch: That he, therefore, was deprived of his right to have counsel of his own choice. That is a new point that will become a very important one, and he also makes the point that because a colored attorney was appointed to represent him and he objected to that, or he now objects to it. I don't know whether we can assume that, but there is that main point of fact, the question of whether the appointment of counsel to represent other defendants, that becomes an important issue for this Court to decide, because this Glasser case, which has recently been decided by the Supreme Court, is an extremely important decision. I don't know whether your Honor is thoroughly familiar—

The Court: Yes, I have read it.

Mr. Lynch: I would state the state of the record now was, the petitioner has previously indicated that he desires the deposition of Judge Lindley, and, of course, his action since then in saying he

does not want any depositions, and discharging Mr. O'Conner—

The Court: I presume the Government would wish to take depositions.

Mr. Lynch: We will take any depositions that are indicated, [78] your Honor, by the record.

The Court: Well, is there anything to be presented today?

Mr. Wright: Please, your Honor, I would like to move the Court to be sworn under oath to testify, and verify the reasons in the application for writ of habeas corpus.

The Court: Haven't you testified in this case before?

Mr. Wright: No, your Honor.

The Court: Let the Petitioner be sworn.

CECIL WRIGHT

The Petitioner: Sworn.

The Court: You may be seated right there, Mr. Wright, and testify from there if you don't object to doing that.

Mr. Wright: That is quite all right.

The Court: I merely stated that for your convenience. If you wish to take the stand you may do so, but if you are willing to testify from where you are seated—

A. That's quite all right.

The Court: Yes. Very well. Did you wish to make a statement?

Mr. Wright: Well, I would like to know if it

(Testimony of Cecil Wright.)

is permissible from the stand if I refer to my application.

The Court: Yes.

Mr. Wright: In making my testimony.

The Court: Yes, go right ahead.

Mr. Wright: Petitioner was denied his constitutional right to separate counsel, and his allegations all set forth that he was denied the separate assistance of counsel.

The Court: Well, isn't that completely covered by your petition?

Mr. Wright: Well, no, your Honor, not completely.

The Court: Well, what is it you wish to testify to in that regard?

Mr. Wright: Well, the petitioner did move the trial court by an affidavit for the right to be represented by counsel of his own choosing.

The Court: Did you file the affidavit before Judge Lindley?

Mr. Wright: Yes, your Honor. I filed the affidavit before the trial commenced.

The Court: Is a copy of that attached to your petition here? [79]

Mr. Wright: No, your Honor. I wrote the trial court for this affidavit, and they stated that the affidavit was not for my benefit but it was a record of the court, but that I wouldn't be permitted to use the affidavit for any reason asserting the judge denied the right to independent counsel of my own

(Testimony of Cecil Wright.)

choice. This was all after the decision of the Glasser case, and I was denied the right to any court record.

The Court: Do you wish a copy of that affidavit?

Mr. Wright: Yes, your Honor. I would say on this point that I moved the trial court for the undivided assistance of counsel.

The Court: Yes. Mr. Lynch, I think the petitioner ought to be furnished with a copy of that affidavit.

Mr. Lynch: I will see that he gets it, your Honor. I will write for it immediately, and I will submit him a copy of it properly certified. I will ask that he be furnished with certified copies.

The Court: Yes, a certified copy of the affidavit, any affidavit that he filed respecting the employment of an attorney to represent him in the case.

Mr. Lynch: Yes, your Honor. I will obtain that and see that he gets a properly certified copy.

Mr. Wright: Your Honor, the petitioner would like, during the period of time taken by Mr. Lynch for the purpose of taking his affidavits for the Respondent, petitioner would like during that time, as to points 2 and 3, to submit to this Court argument by petitioner, not orally, but by writing, and to have ten days to submit his brief, and Mr. Lynch have ten days to make his reply.

The Court: Well, you would wish to do that after you receive a copy of this affidavit?

Mr. Wright: Well, I don't believe that would have any bearing on points 2 and 3.

(Testimony of Cecil Wright.)

Mr. Lynch: That is correct.

The Court: Well, points 2 and 3, you are referring to points in your petition?

Mr. Wright: Yes, your Honor.

The Court: How are they designated? Are they designated under the Title "Argument"? You have a copy of this petition.

Mr. Wright: Yes, I have a copy of the petition.

The Court: On what page of your petition are you referring to? [80]

Mr. Wright: Page 5 of the application.

The Court: You say Point 1—where is Point 1?

Mr. Wright: Point 1 starts on page 1 to page 5.

The Court: Your point is as to—

Mr. Wright: To point out there was no effective assistance of counsel.

The Court: Point 2 what is that?

Mr. Wright: Point 2—

The Court: Those points are contained in the remaining portions of your petition?

Mr. Wright: Just the facts. There is law citations of authorities.

The Court: Yes, now, as to those two points, you are asking for ten days to file a brief supporting your petition?

Mr. Wright: Yes, your Honor.

The Court: And you would wish ten days to reply?

Mr. Lynch: Yes, your Honor. I understand the petitioner's points here in the supplemental

(Testimony of Cecil Wright.)

affidavit, as I stated before, his first and third points are matters of law which can be submitted on the record without the necessity of taking testimony.

The Court: Is there anything further at this time?

Mr. Wright: No, your Honor, I don't believe it would be necessary—I would like to mention I don't believe it would be necessary to produce my body back in this court after this affidavit—

The Court: Produce what?

Mr. Wright: Produce me back in this court.

The Court: Well, if it is we will let you know.

Mr. Wright: Well, I appreciate there is a lot of inconvenience in bringing me from Alcatraz.

The Court: Yes, it is somewhat inconvenient, undoubtedly, but if it would be necessary for you to be brought back—it may be that I would wish you to come back, and it may be that you would wish to give some testimony.

Mr. Wright: I appreciate that.

The Court: After you have read the affidavit, and you have learned what the depositions which will be taken by the Government contain.

Mr. Wright: Yes, your Honor. I merely mentioned that for the fact that I feel that all the testimony, or all the depositions to be taken [81] back in the trial court will be to my—will benefit my—

The Court: Your particular case. Well, that may be so. However, if you will want to take depositions—I should like to have the deposition particularly of Judge Lindley.

(Testimony of Cecil Wright.)

Mr. Lynch: Yes. I think that is the most important one, and the Assistant United States Attorney who was present at the trial.

The Court: Yes.

Mr. Lynch: And possibly the Clerk of the Court, and the Reporter, if any. We would have to ascertain the assistant attorney who was present at that time.

The Court: That is a fact, yes.

Mr. Lynch: I would like to ask the Petitioner if there is any deposition that he particularly desires to be incorporated in this record.

Mr. Wright: No, I don't believe there is. I would stand alone on your depositions.

Mr. Lynch: All right. Do you wish the opportunity to present interrogatories?

Mr. Wright: No. I believe the depositions you take—anything you do in the taking of depositions will be all right with me.

Mr. Lynch: Then it is entirely satisfactory to you that if we take these depositions you don't want to submit interrogatories or cross-questions?

Mr. Wright: No.

The Court: You don't wish any attorney to represent you?

Mr. Wright: No. I will stand alone on any record that will be found in the trial court, or deposition, and any testimony in the deposition.

Mr. Lynch: In saying that, Mr. Wright, you are cognizant of the fact that I intend to present

(Testimony of Cecil Wright.)

proof through depositions I am taking the statements that you have made, and your contentions are untrue, and obviously, because I am representing the Respondent, the purpose of my taking these depositions is to refute what you have said here.

Mr. Wright: I understand that.

Mr. Lynch: I don't understand, although you say you do, that they will be favorable to you, and so we will be clear about the depositions to be taken, you don't desire to submit any interrogatories?

Mr. Wright: No.

The Court: I am wondering if it would be proper under the circumstances [82] to have some person when these depositions are taken, to represent you. I feel quite sure that Judge Lindley would appoint some attorney to represent you.

Mr. Wright: Well, I believe he would—

The Court: Yes. I think he would appoint a reputable attorney there in Danville to sit in on the taking of the depositions, and see that your rights are protected.

Mr. Wright: I could easily waive that right. I feel that the records of the Court and Judge Lindley, himself, the United States Attorney, would not leave any doubt in what they say is true, and I don't believe they would lie about it.

The Court: I don't believe they would, either.

Mr. Wright: So I don't think it would be necessary to go to the trouble to question them.

The Court: I think it would be absolutely neces-

(Testimony of Cecil Wright.)

sary for me to have those depositions here before I pass upon your petition, unless—this is the last point, is it not?

Mr. Wright: The second point.

The Court: Unless you want to submit it on that report, but I think under the circumstances, I would want to take the depositions, of the people in Danville before the case is finally submitted.

Mr. Wright: Well, Mr. Lynch can have any time he wishes in addition to the original time you should allow.

Mr. Lynch: I will immediately write an airmail letter back to the United States Attorney asking him to set the depositions.

The Court: Please ask him to have them set—

Mr. Lynch: I think thirty days will be ample time, and I will have the depositions here.

The Court: What time, then, Clerk; sometime in August?

The Clerk: Yes, your Honor. Thirty days would be the latter part of July or the 1st of August.

The Court: Well, we want some time to receive those. I think you better put it on sometime in August.

The Clerk: August 3rd.

The Court: August 3rd.

Mr. Wright: Your Honor, may I state for Mr. Lynch's benefit that the United States Attorney that was in charge of the prosecution at my trial is not prosecuting attorney there now. [83] He is practicing law in East St. Louis, Illinois.

(Testimony of Cecil Wright.)

Mr. Lynch: Of course, there is another matter in regard to Judge Lindley; as your Honor knows, he leaves the Circuit quite a bit.

The Court: Well, he would probably be in Chicago or Danville.

Mr. Lynch: That is the United States Attorney, not the Assistant?

Mr. Wright: No; the United States Attorney.

The Court: Did the United States Attorney personally handle your case in court?

Mr. Wright: Yes, your Honor.

The Court: Was there any assistant present?

Mr. Wright: No.

Mr. Lynch: That was in Danville where you were tried?

Mr. Wright: That was in Danville.

Mr. Lynch: Before Judge Lindley?

Mr. Wright: Yes.

Mr. Lynch: Might I ask this, your Honor, for the purpose of saving time? How many defendants were there with you, Mr. Wright?

Mr. Wright: There were four others besides myself.

Mr. Lynch: Did you all have the same attorney?

Mr. Wright: The same attorney.

Mr. Lynch: One attorney?

Mr. Wright: One attorney.

Mr. Lynch: One attorney for four men?

Mr. Wright: Five men.

Mr. Lynch: And he was a colored attorney?

Mr. Wright: Colored attorney.

(Testimony of Cecil Wright.)

The Court: Do I understand you to say you objected in open court to this man acting as your attorney?

Mr. Wright: That is true. I objected when the trial was practically half over and resumed my objection when the trial was half over.

The Court: You made it before the trial?

Mr. Wright: I made it by affidavit before.

The Court: You then objected during the progress of the trial?

Mr. Wright: That is true. The United States Attorney refused a summary of the case for the Government on my part when Judge Lindley refused to give me undivided assistance of counsel.

Mr. Lynch: That suggests another question, your Honor, that we should obtain a transcript of the proceedings, because his objections would appear therein.

The Court: Yes.

Mr. Lynch: I will see that that is produced.

The Court: Very well. Now, is there anything further?

Mr. Lynch: Not by me, your Honor.

Mr. Wright: I believe that is it.

The Court: You consent to my continuing the matter until August 3rd?

Mr. Wright: I do your Honor.

The Court: And we will notify you if we think you should be here at that time.

Mr. Wright: Yes. May I ask for a copy of the

(Testimony of Cecil Wright.)

affidavit that Mr. Lynch gets be sent to Alcatraz for my reading, a copy of it?

The Court: Yes.

Mr. Lynch: You mean the affidavit of the court?

Mr. Wright: Yes.

Mr. Lynch: I will send you a certified copy, because you will want to attach it as a supplemental exhibit.

The Court: I think also when the deposition is returned the petitioner should have an opportunity to see it.

Mr. Lynch: Yes, your Honor. I will see the petitioner is furnished and is informed as to all actions that are taken, and that he has copies of all papers.

The Court: Very well. The case is continued until August 3rd.

[Endorsed]: Filed Nov. 16, 1942. [85]

CCA 9, No. 10331—No. 23,647-S

In the District Court of the United States of America for the Eastern District of Illinois

September Term A.D. 1930

No. .....

THE UNITED STATES OF AMERICA

vs.

TUCK WRIGHT, ROBERT RAYMOND, CARL SANDERS, MONTE CRIST, and JOSEPH HARTMAN

PETITIONER'S AFFIDAVIT TO THE TRIAL COURT MADE TWENTY-FOUR HOURS AFTER SAID ARRAIGNMENT AND APPOINTMENT OF COUNSEL

Tuck Wright, one of the above named defendant, makes oath and says that he cannot safely proceed to trial of this cause at the present term of this court on account of the absence of one Glen Rommel and one Mary Rommel both of whom are material witnesses for the defendant in said cause, and whose residence is 713 South Oakland Court, Decatur, Illinois. That this affiant expects to prove by said witnesses, Glen Rommel, and Mary Rommel, the following matters, all of which are material to the issues involved in said cause: to-wit: That this

[86] affiant was not in Strasburg, Illinois, on the 9th day of April, 1930, when the Post Office of the United States at said place was burglarized; that this affiant was severely injured and was in the City of Decatur under the care of one Dr. McGill, and was not at or near the scene of the supposed crime; that all the matters and things which the defendant expects to prove by the said Glen Rommel and Mary Rommel, are true.

And this affiant further says that he tried to communicate with the said Glen Rommel and Mary Rommel by writing to them letters out of the Southern Illinois Penitentiary but was prevented from doing so by the rules of said institution which forbid inmates to write more frequently than one in two weeks. This affiant further says that he is informed and believes that the issues inovlved in this cause will be controverted, and that the evidence relating to such issues will be highly conflicting, as introduced by the respective parties, and that he knows of no other person or persons than the said Glen Rommel and Mary Rommel by whom he can so fully prove the above matters set forth, And this affiant further says that he expects to and believes that he will be able to procure the attendance and testimony of the said Glen Rommel and Mary Rommel at the next term of this Court.

And this affiant further says that the said Glen Rommel and Mary Rommel are not absent by the procurement, connivance or consent of this affiant,

either directly or indirectly, and that this application [87] is not made for delay, but that justice may be done.

/s/ CECIL WRIGHT,
Affiant.

Subscribed and sworn to before me this 17 day of September A.D. 1930.

/s/ D. H. REED,
Clerk of the United States District Court. [88]

No. 23,647-S and CCA 9, No. 10331

[Title of District Court and Cause.]

DEPOSITION OF WALTER C. LINDLEY

Deposition of Walter C. Lindley, of the County of Vermilion and State of Illinois, a witness of lawful age, produced, sworn and examined on his corporal oath, on the 23rd day of July A. D., 1942, at the office of the United States Attorney, Federal Building, Danville, Illinois, in pursuance of Notice of Taking Deposition, dated July 17, 1942, as a witness in a certain suit and matter in controversy now pending and undetermined in the said District Court in the Southern Division of the United States District Court, for the Northern District of California, wherein Cecil Wright, is Petitioner, and James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, is Respondent, case

No. 23647-S, on behalf of the Respondent herein, upon oral interrogatories. [89]

Appearances: For Respondent: United States District Attorney, for the Eastern District of Illinois. By: Ray Foreman, Esq., Asst. U. S. Attorney. For Defendant: (Petitioner). Petitioner not present and not represented by Counsel.

WALTER C. LINDLEY

being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth, as well on the part of Petitioner as the Respondent, in relation to the matter in controversy herein, so far as he should be interrogated, testified and deposed as follows:

Direct Examination

Mr. Foreman:

Q. State your full name.

A. Walter C. Lindley.

Q. Where do you live?

A. Danville, Illinois.

Q. What was your occupation in the year 1930?

A. United States District Judge for the Eastern District of Illinois.

Q. Have you examined the records of the Clerk of the United States District Court for the Eastern District of Illinois in Criminal Case No. 11032?

A. I have. [90]

Q. Have you an independent recollection, Judge

(Deposition of Walter C. Lindley.)

Lindley, of the facts and circumstances which occurred at the trial of the defendants in that case?

A. I have.

Q. Do you recollect the appointment of the Attorney for the defendants in that case?

A. I do.

Q. What was his name? A. J. D. Allen.

Q. Will you describe Mr. Allen, in his capacity as a practicing attorney, Judge Lindley?

A. Mr. Allen was a regularly admitted, practicing lawyer, about fifty years of age, I should say. A student of the law, a competent, aggressive, reputable trial lawyer of a good many years experience, with a good knowledge of the law. He was a man of high character and stood for the highest ideals as a member of the colored race. He was one of the forces for the betterment of his race and a very creditable example of a competent trial lawyer.

Q. Had this attorney previously represented defendants in criminal cases in your Court?

A. He had, for a number of years, had considerable and extensive practice defending men charged with crime in my Court.

Q. Were objections made, by any of such defendants, either orally or in writing, relative to your appointment of Mr. Allen as attorney for said defendants, prior to your appointment of him as their attorney? A. No. [91]

Q. Were any such objections made by any of said defendants prior to the beginning of the trial

(Deposition of Walter C. Lindley.)

of said defendants in that case? A. No.

Q. Were any objections made by any of said defendants to his appointment or his representation of any of said defendants during the trial of said case? A. No.

Q. Were any objections taken by any of said defendants to said attorney's appointment or representation of them after the termination of said trial of said defendants?

A. Never, until I had Cecil Wright's petition in 1942.

Q. To what petition do you refer?

A. A petition I permitted him to file as a pauper in this Court, to vacate the judgment of conviction.

Q. Prior to the filing of said petition in this Court, had you received any written communications from the defendant, Tuck Wright, otherwise known as Cecil Wright, between the date of his conviction and the date of the filing of said petition in this Court? A. I had.

Q. Did defendant Tuck Wright, alias Cecil Wright, ever object or except to your appointment of Attorney J. D. Allen, as his representative in Case No. 11032, in any of said communications with you, prior to the filing of said petition to vacate?

A. No. I say that with this reservation. In the letters that I have in my file from him, I find no such objection at any time prior to the filing [92] of the petition in 1942, and my recollection is that at no time did he write to me complaining of the appointment of his Counsel or say anything about that matter before the petition of 1942.

(Deposition of Walter C. Lindley.)

Q. I call your attention to an exhibit, identified as Government's Exhibit No. 1-A. What is that, Judge Lindley?

A. That is a letter that purports to have been written on December 22, 1939 by Cecil Wright while he was confined in the penitentiary at Leavenworth, Kansas, to me.

Q. How did you receive it?

A. I received it through the United States Mail, in due course, and replied to it under date of December 26, 1939.

(Which said Government's Exhibit No. 1-A, is in words and figures following, to-it:)

GOVERNMENT'S EXHIBIT No. 1-A

December 22, 1939

From: Cecil Wright, L. B. P. M. B. No. 55,980.

To: Hon. Judge W. C. Lindley, Federal Court Bldg., Danville, Illinois.

Honorable Sir:

I am writing you with reference to my case and wish to advise that I was sentenced by you September 17, 1930. I was at that time confined in the State Prison at Menard, Illinois.

My commitment there has a specification added and bracketed in, stating that my sentence starts [93] after the expiration of my state term. The bill of convoy also shows the same additional added sentence.

(Deposition of Walter C. Lindley.)

I wish to call to your attention some correspondence between you and I in the month of June 1935. I wrote you in regards to some advise concerning a Writ of Habeas Corpus in your Court. Your reply to me was, that you had lost jurisdiction in the case after the expiration of the term of Court in which I was convicted and especially after my sentence had begun. Your advice to me at that time, was to file application for a commutation of sentence.

At the time I was preparing my application forms, I had some "Photostatic" copies made and took the matter up with the late Senator James Hamilton Lewis. I also furnished him with a copy of the letter you wrote to me in June 1930. The late Senator Lewis took the matter up with: Mr. James A. Finch, United States Pardon attorney. Mr. Finch forwarded the necessary papers to me through the late Senator Lewis. I filled the forms out but they were destroyed by the prison authorities at Menard, Illinois. It appears to me that it would be necessary for a trial judge to consult the minutes of the court before advising me as to what procedure to take in the case.

Your Honor, I have been in prison almost ten years and I feel like I have served enough time for my wrong doings. I was young at that time and did not realize what I was getting into. I am not in any way connected or associated with the parties [94] here, that were sentenced on the same charge

(Deposition of Walter C. Lindley.)

that have almost completed their term at this institution.

The record of the court shows that these men made a confession and then retracted their written statement. All I ask of you is—to go over your records and furnish the Warden of this institution a similar copy of the letter you wrote to me in June 1935 with reference to my case and sentence.

It is not my desire to go into court for an adjustment of the case, although there is a number of technicalities in the case due to the United States Supreme Court ruling and also that of the Appeal Court, which makes the sentence illegal.

Any consideration shown me in regards to my own case will always be appreciated.

I am, obediently,

/s/ CECIL WRIGHT,

No. 55,980 P.M.B.

Leavenworth, Kansas.

Q. I now show you Government's Exhibit No. 1-B. Will you identify that, please?

A. This is a letter I received from Cecil Wright under date of April 2, 1942.

Q. How did you receive that letter?

A. Through the United States mail.

(Which said Government's Exhibit No. 1-B, is in words and figures following, to-wit:) [95]

(Deposition of Walter C. Lindley.)

GOVERNMENT'S EXHIBIT No. 1-B

From: Cecil Wright, 579 P.M.B.

Date: April 2-42 Apr. 3, 1942 R.R.B.

To: Hon. Walter C. Lindley, Fed. Dist. Ct., Danville, Ill.

Honorable Sir:

I have filed a Motion to Vacate Judgment and Sentence in case No. 11032, with the Clerk of the Court. This motion does not apply to the five year sentence in case No. 11074.

I have filed the motion in propria persona and no counsel will appear for me; and it is my desire to have the motion heard and determined from the contents therein.

I would like to state that after my conviction in case No. 11032, I have lived and abided by the rules and regulations of the various penitentiaries in which I have been continuously imprisoned under a judgment of convictions since September 17, 1930.

Of course your Honor may feel that my incarceration in Alcatraz has no doubt come about from some sort of disorder; but that is not true as my being in Alcatraz is only from the results of Habeas Corpus proceedings filed in the District of Kansas.

The case No. 11032 set forth in my motion is obviously unconstitutional and void: it is not only void for the reason that my constitutional rights

(Deposition of Walter C. Lindley.)

were denied, but the sentence is void by lapse of time.

It is not my desire to put the government to the [96] expense of a new trial, but I am entitled to a new trial and no doubt can obtain the same on appeal if the same is denied by Your Honor.

Thanking you in advance for your kind and careful consideration of this matter, I humbly express my appreciation to your Honorable Court, I am

Obediently,

/s/ CECIL WRIGHT,

No. 579 P.M.B.
Alcatraz, California.

Q. You have received other letters in addition to those identified by you as Government's Exhibits Nos. 1-A and 1-B?

A. Yes, sir. From time to time, over the years, Mr. Wright has written me. He wrote me shortly after his conviction, requesting a reduction of sentence and I advised him that I could not modify his sentence; that the term had expired; that his sentence had begun and that his recourse lay in application for executive clemency, or when he should become eligible, in an application for parole to the Parole Board. Some of these letters were long and they contained nothing other than is reflected in the two letters I have identified.

Q. Were any statements made by Tuck Wright,

(Deposition of Walter C. Lindley.)

alias Cecil Wright, in any of such additional letters, relative to your appointment of Counsel for him during the trial of this case? [97]

A. Never until his application of 1942. Referring to his letter of April 2, 1942, Government's Exhibit No. 1-B, Mr. Wright's attitude apparently, until this year, was disclosed by his letter of December 22, 1939, wherein he said he had been in prison almost ten years and felt he had served enough time for his wrongdoing. He said in that letter that he was young at the time and did not realize what he was getting into. This appears on the second page of his letter of December 22, 1939, Government's Exhibit 1-A, in the second paragraph.

Q. Did the defendant, Tuck Wright, alias Cecil Wright, at any time prior to or during the course of the trial of said case, request the appointment of an attorney other than Mr. Allen to represent him in said trial? A. No.

Q. Did the defendant, Tuck Wright, alias Cecil Wright, at any time prior to or during the course of the trial of said case, request the opportunity to employ separate counsel to represent him in said trial? A. No.

Q. Have you a recollection, Judge Lindley, of the events which occurred at the time of your appointment of Mr. Allen as Attorney for the several defendants in Case No. 11032? A. Yes, sir.

Q. Will you kindly state the events which occurred at that time?

(Deposition of Walter C. Lindley.)

A. When Wright was arraigned, he was advised [98] that he might plead guilty or not guilty. That, if he plead guilty, it would be the Court's duty to sentence him. If he plead not guilty, he would be entitled to a trial, either by jury or before the Court. In response to the arraignment and these suggestions from the Court, Wright entered a plea of not guilty. As presiding Judge, I then inquired of him as to whether he had Counsel, and advised him he was entitled to Counsel. He replied that he had not. I inquired as to whether he had funds with which to procure Counsel. He assured me he had none. I asked him if there were any means by which he could obtain Counsel. He assured me that there were not. I therefore appointed Mr. Allen, who happened to be in the Court Room, awaiting another matter, and I asked him if he would be willing to undertake to defend the defendants in the case. Mr. Allen graciously accepted the responsibility. No objection was made by any defendant. I directed the United States Attorney to give Mr. Allen full access to all of the file, disclosing all evidence against the defendants, and the United States Attorney complied with the request. When the case came on for hearing before the jury, the jury was selected in the ordinary manner and Mr. Allen defended throughout the trial, making such defense as he could under the facts presented, and appealed to the jury for an acquittal.

Q. Were any documents or pleadings of any na-

(Deposition of Walter C. Lindley.)

ture prepared by Mr. Allen, as Attorney for Tuck Wright, alias Cecil Wright? [99]

A. The only motion or pleading filed was an affidavit of Wright, asking for a continuance. I think a copy of it appears in the transcript.

Q. Were any oral motions made by this Attorney in behalf of defendant, Cecil Wright?

A. None other than the motion for a separate trial and such other motions as were made during the course of the trial by objections to testimony, or motions to strike, and a motion for an additional charge to the jury.

Q. Do you have any independent recollection of any such additional motion?

A. Yes, sir. My recollection is that Mr. Allen suggested that I had overlooked charging the jury as to the effect of the statements of the respective defendants. I thought I had fully explained that to the jury, but, upon his suggestion I again charged the jury, as he moved that I should, that no confession was binding upon any person other than the one who made it, and that it was not to be considered as evidence against any other defendant.

Q. Was there an official reporter employed in the United States District Court, for the Eastern District of Illinois, at the time of the trial of this case? A. No, sir.

Q. Was a reporter available to take the testimony in cases in such Court, when especially employed to do so?

A. Yes, and even when defendants on trial re-

(Deposition of Walter C. Lindley.)

quested a court reporter and had no funds with which to hire him. [100]

Q. Was any request made by any of the defendants in Case No. 11032 for the reporting of the testimony in the case?

A. I am not certain but my best recollection is that there was and that Mr. Gannon took the evidence. I may be mistaken about this.

Q. Where is Mr. Gannon at the present time?

A. He died a number of years ago.

Q. Was the report of this testimony, if taken, ever transcribed?

A. Not that I ever heard of or knew.

Q. Was there ever any request made in this case for the transcription of said testimony, if such was taken?

A. Not until after Mr. Gannon had died, and then only by inference in that petition—the petition of 1942.

Q. In the trial of Case No. 11032, did the United States District Attorney, at any time during the trial of said case, request the Court to dismiss the indictment as against the defendant, Tuck Wright, alias Cecil Wright? A. No.

Q. Was any motion of any similar character made by the United States District Attorney, or any Assistant United States Attorney, during the trial of said case?

A. No, and I might add that I have always believed it to be the law that the United States At-

(Deposition of Walter C. Lindley.)

torney may nolle pross or dismiss an indictment, irrespective of the Court's desire; in other words upon [101] motion of the United States Attorney to nolle pross or dismiss an indictment, the Court must grant that motion, and that rule I have consistently followed. I am sure no such motion, or as Mr. Wright puts it in one of his letters to 'squash the indictment' was ever made.

Q. Can you tell us, Judge Lindley, why there was a denial of the motions for continuance and for severance by the defendant, Tuck Wright, alias Cecil Wright?

A. The motion for continuance was denied because I thought that no legal ground for continuance existed. The affidavit disclosed that defendant was evidently aware of the indictment against him as he said that he had attempted to write to two witnesses, but that the authorities at the State Penitentiary did not let his letters go out, but he did not show that from the time he acquired knowledge of the indictment up until the time of the trial, he made any other effort or attempt to get in contact with witnesses or arrange for their presence, or subpoena them. He consulted no lawyer; he wrote no lawyer. He did not write the Judge or the United States Attorney, but waited until the time of his trial, and then made an application for continuance. I believed he had not shown due diligence. If I erred, it was because I believed that fact.

(Deposition of Walter C. Lindley.)

As to the motion for severance, I thought that inasmuch as these defendants had been indicted together, [102] as co-defendants, inasmuch as they were charged with conspiracy jointly, the Government should not be put to the expense of more than one trial before one jury. I believed that I could adequately protect the rights of each defendant by my charge to the jury, and this I attempted to do, and, in my discretion, therefore I denied the motion. If you will permit me, I will have you incorporate in the record a copy of my letter to Mr. Wright under date of December 26, 1939, and that of January 22, 1940.

Mr. Foreman: Such documents may be identified as Government's Exhibits Nos. 1-C and 1-D, Exhibit 1-C being the letter of December 26, 1939, and Exhibit No. 1-D, the letter of January 22, 1940.

(Which said Government's Exhibits Nos. 1-C and 1-D, so marked for identification, and so identified, are in words and figures following, to-wit:)

GOVERNMENT'S EXHIBIT No. 1-C

Mr. Cecil Wright, No. 55980 P.M.B.
Leavenworth, Kansas.

Dear Sir:

I have your letter of December 22. As I have previously advised you, the jurisdiction of a trial judge over a case ends when sentence begins. He

(Deposition of Walter C. Lindley.)

has no more power of authority over your sentence than the man of the street. Your remedy, as I [103] previously advised you, lies in petition for parole or petition for commutation of sentence. Relief under each of these must be made by authorities other than the court.

I do not understand how it could be that prison authorities at Menard destroyed your papers, and I am sure that if you consult the warden at Leavenworth you will be furnished with authority to make proper application for parole or for executive clemency. On the former, the Parole Board acts and on the latter, the President through the Department of Justice acts, and obviously, each of these authorities is wholly outside the Court.

Yours very truly,

WCL:J

GOVERNMENT'S EXHIBIT No. 1-D

January 22, 1940

Mr. Cecil Wright,

No. 55,980 Box No. P.M.B.

Leavenworth, Kansas.

Dear Sir:

The law is, as I have previously said, that once a defendant has entered upon the service of his term, the trial court has no more jurisdiction over him than the man in the street. It is not necessarily

(Deposition of Walter C. Lindley.)

the expiration of the term at which the trial occurred that terminates the jurisdiction,—it is the commencement of the execution of the sentence. The [104] Supreme Court of the United States has many times so decided. The only exception to this rule occurs where the trial court suspends at least a part of the sentence for a definite period in the future and retains jurisdiction. As this did not occur in your case, my power is at an end and your remedy lies with the executive authorities for executive clemency or parole.

If you believe that your incarceration is wrongful under the constitution, you have a right to test it by habeas corpus proceedings in the United States Court where you are located, but you cannot proceed here.

Obviously, I cannot accede to your statement that you were deprived of your constitutional rights. Every defendant in this court is advised of the charge against him. He may plead guilty or not guilty. If he pleads not guilty and has no funds, a lawyer is assigned to defend him. If he has material witnesses whose presence he cannot secure, the United States statutes furnish him with relief through government advancement of funds to secure the witnesses.

Further communication to me will be of no avail

(Deposition of Walter C. Lindley.)
because, as I have assured you, there is nothing I can do for you.

Yours truly,

United States District Judge.

WCL:J [105]

A. I might add that I have read Mr. Wright's several petitions and letters, and that I never knew of the present objections until early in 1942. My feeling, upon an analysis of his letters in the past and the recent change in position, is that brooding over his sentence, he has come to believe that certain things occurred which never existed. Obviously, the sentence I gave him was somewhat severe. Yet, in my discretion as trial Judge, I believed the facts and circumstances to be such as to justify the sentence.

And further deponent sayeth not.

/s/ WALTER C. LINDLEY.

CERTIFICATE

State of Illinois,
Vermilion County—ss.

I, Gertrude Downey, A Notary Public within and for the County of Vermilion and State of Illinois, the officer acting by virtue of authority in Notice to Take Deposition, the original of which is hereto attached and made a part hereof, in the taking of the deposition of said Walter C. Lindley, the witness, do hereby certify that previous to the

(Deposition of Walter C. Lindley.)

commencement of the examination of said Walter C. Lindley, as witness in the cause entitled Cecil Wright, Petitioner, vs. James A. Johnston, No. 23647-S, he was duly sworn to testify the truth in relation to the matter in controversy between the above named Petitioner and Respondent, [106] so far as he should be interrogated concerning the same; that said deposition was taken down by me in shorthand, at the office of the United States Attorney for the Eastern District of Illinois, in the Post Office, at Danville, Illinois, on the 23rd day of July, A.D., 1942, commencing at the hour of 10:00 a.m. of said day; that said deposition was taken upon oral interrogatories propounded by Ray Foreman, Esquire, Assistant United States Attorney, and said interrogatories, and the answers thereto, were reduced to writing by me, and the foregoing deposition is a full, true and correct transcript of the testimony of said witness, given at the time and place aforesaid, and in the order in which said oral interrogatories and the answers thereto were given.

That the signature of said witness is the genuine signature of said witness, Walter C. Lindley:

I further certify that I am not of counsel or attorney for either party in said cause, and am not interested in the outcome of said case.

I further certify that my commission expires on the 14th day of October, A.D., 1943, and is, at the

time of the making of this certificate, in full force and effect.

Given under my hand and official seal, at Danville, Illinois, this 25th day of July, A.D., 1942.

[Seal] GERTRUDE DOWNEY,
Notary Public.

My Commission expires Oct. 14, 1943. [107]

[Title of District Court and Cause.]

NOTICE OF TAKING DEPOSITION

To Cecil Wright, Petitioner:

You will please take notice that on Thursday, July 23, 1942, at 10:00 o'clock a.m. the deposition of Walter C. Lindley, United States District Judge for the Eastern District of Illinois, will be taken before Gertrude Downey, Notary Public, or any other Notary Public of competent authority who is not of counsel or attorney for either party or interested in the outcome of the case, at the office of the United States Attorney for the Eastern District of Illinois, Danville, Illinois;

That said deposition is to be taken upon oral interrogatories and pursuant to the provisions of the Revised Statutes of the United States and the Rules of Civil Procedure for the District Courts of the United States adopted by the Supreme Court of the United States pursuant to the Act of June 19, 1934, Chapter 651, and will begin, as above

stated, at 10:00 o'clock a.m. of said day and will continue from day to day thereafter until completed, transcribed, signed and properly attested to. It shall then be forwarded by said Notary Public to the Clerk of the United States District Court, Southern Division of the Northern District of California, San Francisco, California, under the proper case heading and number as above set out. [108]

Dated: July 17, 1942.

FRANK J. HENNESSY,
United States Attorney.

[Endorsed]: Filed Aug. 13, 1942.

[Title of District Court and Cause.]

DEPOSITION OF HAROLD G. BAKER

Deposition of Harold G. Baker, of the County of Saint Clair and State of Illinois, a witness of lawful age, produced, sworn and examined on his corporal oath, on the 29th day of July, A. D. 1942, in pursuance of Notice of Taking Deposition, dated July 24, 1942, to be continued from day to day until the completion of said Deposition, which said Deposition was continued by me on July 24, 1942, to July 29, 1942, at the office of the United States District Judge, Federal Building, East St. Louis, Illinois, as a witness in a certain suit and matter in controversy now pending and undetermined in the said District Court, in the Southern Division of the United States District Court, for the North-

ern District of California, wherein Cecil Wright is Petitioner, and James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, is Respondent, case No. 23647-S., on behalf of the Respondent herein, upon oral interrogatories. [109]

Appearances: For Respondent: H. Grady Vien, United States District Attorney, for the Eastern District of Illinois; and Ray Foreman, Assistant United States District Attorney for the Eastern District of Illinois. For Defendant (Petitioner): Petitioner not present and not represented by Counsel.

HAROLD G. BAKER

being first duly sworn by me as a witness in said cause, previous to the commencement of his examination, to testify the truth, as well on the part of Petitioner as the Respondent, in relation to the matter in controversy herein, as far as he should be interrogated, testified and deposed as follows:

Direct Examination

By Mr. Vien:

Q. State your name, please.
A. Harold G. Baker.
Q. What is your business? A. Lawyer.
Q. Your offices are where?
A. Murphy Building, East St. Louis, Illinois.
Q. How long have you been practicing law?
A. I was admitted in 1921.
Q. Where have you practiced since that time?
A. In East St. Louis. [110]

(Deposition of Harold G. Baker.)

Q. What has been the nature of your practice since 1921, Mr. Baker?

A. I was in the general practice of the law with my father for a time after I was admitted to the Bar. I was then in the firm known as Keefe, Baxter, Miller and Baker which represented various railroads and corporations. In 1926, I was appointed United States Attorney for the Eastern District of Illinois and served and devoted my full time to those duties until 1931. In 1931, Mr. Lesemann, who had been my chief assistant while I was United States Attorney, and I started the practice of law together, the firm being Baker and Lesemann. Subsequently, other members were admitted to the firm and it is now composed of Baker, Lesemann, Kagy and Wagner. We are engaged in the general practice representing such concerns as the Southern Illinois National Bank, the Western Union Telegraph Company, Aetna Casualty and Insurance Company, Western Insurance Company and concerns of that sort.

Q. You have had extensive practice in the Federal Court in the Eastern District of Illinois?

A. Yes, both before and after I was United States Attorney.

Q. You have represented defendants in criminal cases?

A. Yes, sir, numerous criminal cases.

Q. During the time you were United States [111] Attorney from 1926 to 1931, what was the

(Deposition of Harold G. Baker.)

nature of the work you personally did in the office?

A. I handled cases from the time a complaint was received in the office, drafted informations and indictments and handled the matters before the grand jury and tried cases myself. There were, at that time, two assistants who were also engaged in the same sort of work. One in Danville and one in East St. Louis. Mr. John Speakman, who died a few months ago was the assistant at Danville and Mr. Ralph Lesemann, now one of my law partners, was the assistant at East St. Louis.

Q. In the case of the United States of America versus Cecil Wright, Number 11032, did you personally handle any part of that case?

A. My recollection is, Mr. Vien, I handled the entire matter from the time the first reports of the burglary at Strasburg were received until conviction and the last official act I think I performed in the case was in submitting the parole reports in accordance with the procedure then in force and those were dictated by me.

Q. Was there other defendants?

A. Yes. My recollection is there were numerous other defendants and the question arose at the inception as to who would be charged with the various offenses. These men had been arrested, as I recall, in Decatur, Illinois, which is in the Southern District of Illinois, in possession of rifles, field glasses and automatic pistols which had been stolen [112] from the armory at Sullivan, Illinois, which is in the Eastern District of Illinois, and subsequently

(Deposition of Harold G. Baker.)

some of them were identified as having been engaged in the robbery of the post office at Strasburg and others were found in the possession of a stolen automobiles with the result that we divided the charges and indicted one group for the Strasburg robbery and I think two other individuals for the theft of the automobile and their transportation of the automobile in interstate commerce.

Q. Was Cecil Wright one of the defendants in that case?

A. Yes, my recollection is that Cecil Wright was indicted in the Strasburg robbery, in case number 11032, and also indicted for the transportation of the stolen automobile, having been arrested in the stolen automobile at Gary, Indiana, and that was case number 11074, I think.

Q. Did you personally participate in the trial of Case Number 11032?

A. The files of the United States Attorneys Office, which I have examined, show on the file cover in my own hand writing the arraignment, the appointment of counsel, and also show the name of the judge before whom the case was heard and the fact that there was a trial by jury, and the sentence. Also on that file is a notation in the hand writing of William C. Ingram, which I recognize, showing the defendants were notified on August 29, 1930 that the case was set for trial on September [113] 17, 1930. Certain of the defendants were in various penitentiaries. Monte Crist was in the Indiana State Penitentiary at Michigan City, In-

(Deposition of Harold G. Baker.)

diana, and it was necessary for us to secure a writ of habeas corpus ad prosequendum. This issued sometime in the summer of 1930 and Governor Leslie of Indiana refused to allow the Warden to recognize the writ.

Q. Who was William C. Ingram?

A. Assistant United States Attorney. Prior to his being admitted to the bar he had been chief clerk in the United States Attorney's office but my recollection is that by 1930 he had been admitted to the bar and upon his admission he was appointed as an assistant United States Attorney, performing the duties of chief clerk in the office of the United States Attorney.

Q. Do you have a recollection of the actual trial of this case, Mr. Baker?

A. Yes, I recall the defendants were arraigned on the 16th of September, 1930; that Judge Lindley advised them as to their right and as to his duties in the event a plea of guilty was entered and their right to counsel. They advised the court they were without counsel and Judge Lindley appointed J. D. Allen of Danville to represent them.

Q. Was he appointed to represent all of them?

A. That is my recollection.

Q. What day was he appointed?

A. September 16, 1930. [114]

Q. What was the date of the trial?

A. September 17, 1930.

Q. Were the defendants in court at the time Mr. Allen was appointed?

(Deposition of Harold G. Baker.)

A. Yes, Mr. Allen was appointed at the time of their arraignment, I believe. He was there at the time of the arraignment and at the trial.

Q. Did they make any objection concerning Mr. Allen's appointment at the time it was made?

A. None that I recall.

Q. Do you know whether the defendants, including Cecil Wright, conferred with Mr. Allen in regard to the case?

A. Mr. Allen conferred with the defendants immediately after his appointment and came to the office of the United States Attorney which was down the hall from the court room at Danville, and asked to see certain portions of the file and we gave him the information he desired and whether he went back and discussed the matter with them in the afternoon, I wouldn't know, but I imagine he did.

Q. Did you know J. D. Allen prior to his appointment in this case?

A. Yes, for four or five years prior to the time of this incident.

Q. Had he ever appeared in the Federal Court of the Eastern District of Illinois representing defendants in criminal cases prior to that time?

A. Yes, he had an extensive practice in [115] Danville and the surrounding territory and had appeared in civil matters and criminal matters in the Federal Court.

Q. What would you say was the character and

(Deposition of Harold G. Baker.)

standing of Mr. Allen as a member of the bar of the Federal Court at that time?

A. I have and had the highest regard for his honesty and integrity and his ability as a lawyer. He always protected his client's interests and he knew the law and was adept in following it in a given case. He was a good lawyer.

Q. Was any objection made by Cecil Wright to you or to Judge Lindley prior to the time of the commencement of the case concerning the appointment of J. D. Allen as attorney for Cecil Wright?

A. None. No representation was made to me and none to Judge Lindley to my knowledge indicating that Cecil Wright was dissatisfied with the appointment of Mr. Allen.

Q. Were any objections made by Cecil Wright during the trial of the case?

A. None. He made no objection whatever to the appointment or the action of Mr. Allen. The first knowledge I had of this matter was when you gentlemen advised me of the fact you wanted to take my deposition, which was about a week or two ago. In the meantime I have had an opportunity to go into the correspondence between Cecil Wright and myself while he was incarcerated in [116] the Southern Illinois Penitentiary and in none of the correspondence did he ever protest about the action of the trial court and the first knowledge

(Deposition of Harold G. Baker.)

I had of the charges he now makes, as I said, was about two weeks ago.

Q. Did Cecil Wright ever make any objection or criticism to you personally or by letter of the method of the conduct of the trial by his attorney, Mr. Allen?

A. No and he had ample opportunity so to do over a long period of time because as I said awhile ago, there was some correspondence with him and my recollection is that he wrote a letter to Prat Taylor, who was then a Deputy United States Marshal, concerning certain of the crimes which had been committed by the gang he had ben associating with, which letter, according to the records in the file, I forwarded to K. P. Aldrich who was then Post Office Inspector in charge at Chicago and who is now Chief Post Office Inspector. I also recall, after reviewing the file, Wright wrote me about certain crimes with which he was associated and I referred his letters to the Special Agent in charge of what was then the Buerau of Investigation of the Department of Justice in St. Louis.

Q. Did Cecil Wright, to your knowledge, ever request the appointment of any other attorney?

A. No, sir.

Q. What would you say as to the conduct of [117] the trial of Cecil Wright by J. D. Allen as to whether he had a fair trial?

A. In my opinion, he did have a fair trial. In

(Deposition of Harold G. Baker.)

my opinion, Mr. Allen protected the interest of Cecil Wright throughout the entire trial.

Q. Did Mr. Allen ever make a motion for a continuance of the trial of the case?

A. My recollection is that Mr. Allen came in on the morning of the trial, which was some 24 hours after he had been appointed and stated to the Court, on behalf of the defendant Wright he wished to move for a continuance and presented some sort of affidavit. The matter was argued before Judge Lindley and I resisted the motion because as I say, he had had several weeks at least to prepare for the trial, having been notified in August as to the date the case was set for trial, and subsequently, it is my recollection, immediately after the motion for continuance was denied, Mr. Allen made an oral motion for a severance and Judge Lindley said at that time that he would keep in mind the situation which Mr. Allen presented and did so in his charge to the jury.

Q. Was there a motion to "squash" filed by Mr. Allen on behalf of his client?

A. No, no demurrer to the indictment or any motion of that nature was ever filed.

Q. The indictment was never attacked in any manner, shape or form? [118]

A. That's my recollection, either in Case Number 11032 or the companion cases.

Q. And was any motion made by you, as United States Attorney at the close of the plaintiff's case or at the close of all the evidence to "squash" the

(Deposition of Harold G. Baker.)

indictment or dismiss the case as to Cecil Wright and discharge him?

A. No, no such motion was ever made by me in this matter and there is no recollection on my part and no indication in or on the file that I ever made any motion to dismiss or nolle as to Cecil Wright.

Q. Mr. Baker, you have made a close examination of the files of the office of the United States Attorney in case Number 11032 and the companion case Number 11074 and also the court files in the office of the clerk of this Court have you not?

A. Yes, Mr. Vien. After you advised me you wanted to take my deposition, at my request you made available to me the files that started during my term as United States Attorney in cases number 11032 and 11074, the latter being the second case in which certain of the defendants in 11032 were charged with the violation of the National Motor Vehicle Theft Act and in which the defendants, including Cecil Wright, entered a plea of guilty after the verdict of the jury had been entered in 11032.

Mr. Vien: That is all.

HAROLD G. BAKER. [119]

CERTIFICATE

State of Illinois,
Saint Clair County—ss.

I, Walter Elliott, a Notary Public within and for the County of Saint Clair and the State of Illinois, the officer acting by virtue of authority in Notice to Take Deposition, the original of which is hereto attached and made a part hereof, in the taking of the deposition of said Harold G. Baker, the witness, do hereby certify that previous to the commencement of the examination of the said Harold G. Baker, as witness in the cause entitled Cecil Wright, Petitioner vs. James A. Johnston, No. 23647-S, he was duly sworn to testify the truth in relation to the matter in controversy between the above named Petitioner and Respondent, so far as he should be interrogated concerning the same; that said deposition was taken down by me in shorthand, at the office of the United States District Judge for the Eastern District of Illinois, in the Post Office, at East St. Louis, Illinois, on the 29th day of July, A. D. 1942, commencing at the hour of 11:00 a.m. on said day; that said deposition was taken upon oral interrogatories propounded by H. Grady Vien, Esquire, United States Attorney, and said interrogatories, and the answers thereto were reduced to writing by me, and the foregoing deposition is a full, true and correct transcript of the testimony of said witness, given at the time and place aforesaid, and in the order

in which said oral interrogatories and the answers thereto were given. [120]

That the signature of said witness is the genuine signature of said witness, Harold G. Baker:

I further certify that I am not of counsel or attorney for either party in said cause, and am not interested in the outcome of said case.

I further certify that my commission expires on the 27th day of September, 1942, and is, at the time of the making of this certificate, in full force and effect.

Given under my hand and Official Seal, at East St. Louis, Illinois, this 31st day of July, A. D. 1942.

(Seal) WALTER ELLIOTT,
Notary Public.

My commission expires: September 27, 1942.

[Endorsed]: Filed August 3, 1942. [121]

RESPONDENT'S EXHIBIT A

No. 23647-S

In the District Court of the United States
For the Eastern District of Illinois

Criminal Docket

Docket 11032

Title of Case.

THE UNITED STATES vs. ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN, MONTE CRIST, TUCK WRIGHT—whose true Christian name is to the Grand Jurors unknown.

Strasburg Shelby Co. Bond $10,000

Indictment—Postal Law

Attorneys: For U. S.: Harold G. Baker. For Defendant: J. D. Allen.

Abstract of Costs.	Amount.
	10000 "
	10000 "
Fine,	10000 "
	10000 "

Clerk,
Marshal,
Attorney,
Commissioner's Court,
Witnesses,

1930 Proceedings

June 5—Enter return of Indictment—File Indictment

Respondent's Exhibit A—(Continued)

1930 Proceedings

June 5—Enter Order B. W. Issue B. W.

Aug. 29—File two praecipes—issue 2 subpoenas

Aug. 29—Enter order for writ of Habeas Corpus ad Prosequendum for Monte Crist from Indiana State Penn to Danville Sept. 17, 1930 and return

Aug. 29—Enter Order for Writ of Habeas Corpus ad Prosequendum for Carl Sanders, Robert Raymond, Joseph Hartman & Tuck Wright from So. Ill. Penn. to Danville Ill, Sept. 17-30 and return

Sept. 8—File subpoena. Service on Rono Keefe 9/2/30

Sept. 16—Enter plea of not guilty, Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright. [123]

Sept. 16—Atty. J. D. Allen appointed to defend

Sept. 17—File return on Writ of Habeas Corpus ad Pros.

Sept. 17—Enter proceeding of trial by jury of Defendants Robert Raymond, Carl Sanders, Joseph Hartman, Tuck Wright

Sept. 17—Enter Verdict of Jury, guilty as to each Defendant and Sentence

Sept. 17—Each Defendant 5 yrs. on 1st count, 3 yrs. on 2nd count and 2 yrs. on 3rd count, in the U. S. Penn. at Leavenworth and fined $10,000.00. All sentences to be served con-

Respondent's Exhibit A—(Continued)

1930 Proceedings

secutively and begin on their release or discharge from the So. Ill. Penn.

Sept. 17—Issue certified copy of sentence.

Sept. 17—Issue Warrant to Convey

Sept. 18—File Subpoena, due service on Wm. Wilson, Otto Wirth, Wm. Foster, Ralph Terry 9/1/30. Returned unexecuted as to Walter C. Bisson

Dec. 5—Strike with leave to reinstate as to Dft. Monte Christ [124]

1931 Proceedings

Jan. 16—File B. W. ret's unexecuted—sentenced 9/7/30

1934

June 22 File Petition for modification of sentence and/or probation—Jos. Hartman (see also 11073)

June 22—Enter hearing on said Petition. Same denied.

1930

Sept. 17—Issue warrant to convey Robert Raymond.

Case No. 11032 The U. S. vs. Robert Raymond, et al.

1934

Nov. 15—File Warrant to Convey Deft. Robert Raymond del to U. S. Pen. at Leavenworth, Kansas on 11/13/34.

1939

Nov. 7—File certified copy of Sentence—duly executed by delivering Tuck Wright to U. S.

Respondent's Exhibit A—(Continued)

Pen at Leavenworth, Kansas on November 1, 1939.

1941 Proceedings

June 19—File Motion & Affidavit for transcript of Record to be furnished in Forma Pauperis

June 19—Enter Order for Clerk to submit transcripts without payment of fees which is to be charged to Constructive Earnings

1942 Proceedings

July 3—File Memo of Findings & Conclusions upon Motion to vacate Judgment—Cecil Wright—Motion denied.

(Here follows copy of Indictment which was previously set out at pp. 120-124 of this printed record.)

In the District Court of the United States
For the Eastern District of Illinois

Tuesday, September 16, 1930

Present: Honorable Walter C. Lindley, Judge.

No. 11032

THE UNITED STATES

vs.

ROBERT RAYMOND, CARL SANDERS, JOSEPH HARTMAN AND TUCK WRIGHT

INDICTMENT

VIOLATION POSTAL LAWS

And Now on this 16th day of September, A. D. 1930, comes the United States, the plaintiff in this

Respondent's Exhibit A—(Continued)

case, by Harold G. Baker, United States Attorney for the Eastern District of Illinois, and comes also the defendants Robert Raymond, Carl Sanders, Joseph Hartman and Tuck Wright each in person. And the said defendants being arraigned on [126] the indictment herein for plea thereto, each says that he is not guilty as therein charged; and now it appearing to the court that said defendants are without legal counsel to defend them and are unable to secure such counsel, it is ordered by the Court that J. D. Allen, an attorney and counsellor of this court, be and he is hereby appointed to defend the said Robert Raymond, Carl Sanders, Joseph Hartman, and Tuck Wright.

* * * * *

Respondent's Exhibit A—(Continued)

THE JURY'S VERDICT

We, the Jury find the defendants Carl Sanders, Tuck Wright, Joe Hartman and Bob Raymond guilty in manner and form as charged in the indictment.

No. 11032

/s/ D. C. BURROW,
Foreman

/s/ S. S. WILSON
/s/ MARK W. WISEMAN
/s/ G. W. GILLILAND
/s/ J. W. SNIDER
/s/ CHARLES TILTON
/s/ H. R. BOESCHEN
/s/ OSCAR FORTH
/s/ D. E. FRITZ
/s/ WM. BASINGER
/s/ HARRY BEARD
/s/ STEPHEN GANNON

[Endorsed]: [127]

(Here follows copy of Order of the Trial Court made on September 17, 1930, previously set out at pp. 60-61 of this printed record.)

(Here follows affidavit of Tuck Wright previously set out at pp. 110-112 of this printed record.)

Respondent's Exhibit A—(Continued)

In the District Court of the United States
For the Eastern District of Illinois

No. 11032

UNITED STATES OF AMERICA

vs.

CECIL WRIGHT

Lindley, Judge.

MEMORANDUM OF FINDINGS AND CONCLUSIONS UPON MOTION TO VACATE JUDGMENT.

The court has examined the motion of defendant Cecil Wright to vacate the original judgment entered September 17, 1930, as well as his application for leave to file the same as a poor person.

The leave to file the motion as a poor person is allowed.

The motion to vacate the judgment is denied.

Nothing occurred at the time of the trial justifying the allegations of fact made by defendant. [128] Counsel appointed to represent him, though colored, was a reputable, capable and experienced member of the bar. He was given full access to all of the information in the files of the United States Attorney with regard to each defendant. There appeared a transcript of the statements of all witnesses. Thus defendant and counsel were fully advised as to just what would be presented against defendant.

Respondent's Exhibit A—(Continued)

The evidence disclosed that defendant participated in banditry and robbery with the use of a sawed off shot gun and other lethal instruments; that he and his associates overpowered and tied up the watchman and policeman and disclosed and and exercised a lawless intent of most serious character. The jury heard the evidence. Each defendant was identified. There was no question as to guilt and the jury could have reasonably returned no other verdict.

In the companion case No. 11074, Wright entered a plea of guilty and received a sentence of five years, made to run consecutively to that imposed in this cause.

Defendant insists that the sentence is void and, therefore, may be vacated, but there is nothing to sustain this assertion.

The circumstances were such as the court believed justified it in denying the motion for continuance and for a separate trial. If error actually occurred, defendant's remedy lay in appeal.

The court made no agreement of any character [129] with defendant or his counsel to the effect that if other defendants would plead guilty, defendant would be acquitted. The allegation is pure fabrication.

The confessions of other defendants were received as evidence only against those making them and the jury was expressly so instructed.

The judgments are in the exact form they were

Respondent's Exhibit A—(Continued)

entered on the date of entry. There has been no post-dating and no modification. The record speaks for itself.

Defendant has untrammeled and unimpaired assistance from reputable counsel who served him faithfully and properly protected in full all of his rights.

There was no instruction to the jury that defendant should be found guilty but the jury was instructed that each defendant was to be tried only upon the evidence submitted against him and that he must be proved guilty by such evidence beyond all reasonable doubt.

Defendant insists that in sentencing him, inasmuch as he was under execution of sentence in another institution, the court could not impose upon him another to begin at the termination of that which he was then serving. The law is to the contrary. In Ex Parte Lamar, 274 Fed. 160 at 176 the Circuit Court of Appeals for the Second Circuit expressly decided this point, saying that the district court was not prohibited from fixing the [130] date of commencement of the term as the time when the prisoner finished a sentence he was then serving. The court commented that to hold otherwise would be to make a mockery of the law and stultify the course of justice. This decision was affirmed by the United States Supreme Court in 260 U. S. 711. Other courts holding that a sentence of imprisonment may properly commence upon the expiration of a preceding sentence are Howard v.

Respondent's Exhibit A—(Continued)

U. S., 75 F. 986; U. S. v. Farrell, Federal Case 15,074; 5 D. C. 311; In re Jackson, 10 D. C. 24.

I have reviewed the facts, examined carefully the record. Most of what defendant sets forth amounts at the most to an allegation of error in the action of the court at the trial. Such error may be taken advantage of only by appeal. That there was none would seem obvious from the fact that for twelve years, defendant prosecuted no appeal. Such error does not invalidate a judgment. The court has no power at this date to review or modify a sentence entered in 1930, because it is now alleged that error was committed at the time of the trial.

Consequently the motion is denied.

Entered this 3rd day of July, A. D. 1942.

/s/ WALTER C. LINDLEY,
Judge.

[Endorsed]: 11032. U. S. Cecil Wright. Memo of Findings and Conclusions upon Motion to Vacate Judgment. Filed Jul 3, 1942. D. H. Reed, Clerk.

GOVERNMENT'S EXHIBIT No. 1

Case No. 140,499-D

STATEMENT OF ROBERT RAYMOND

State of Illinois,
County of Edgar—ss.

I, Robert Raymond, being first duly sworn, depose and state:

I am 25 years of age and my home is in Cleve-

Respondent's Exhibit A—(Continued)

land, Ohio. I am making this statement in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, without any promise of reward, or threats being made, knowing that the same may be used against me.

On the evening of April 8, 1930, Monte Crist, Tuck Wright, Joe Hartman, Carl Sanders and I left Decatur, Illinois, in two automobiles. I was riding with Hartman in a four door sedan, while Crist, Wright and Sanders were in the two door sedan. Both machines were model "A" Fords. We drove around the country and sometime after midnight passed through Strasburg, Illinois, and drove on to Stewardson, Illinois. We drove out on the highway between Strasburg and Stewardson and discussed whether we would make Stewardson or Strasburg, but finally agreed to go to Strasburg. It was agreed that Hartman and I would drive into town and "Take" the night watchman, then signal to the other fellows to come in, which was done. [132] We stuck up the nightwatchman and I signalled to the other fellows with a flash light. We searched the watchman and took from him his .25 caliber revolver, badge, keys and some money and then tied his hands behind him and put him in the four door sedan with Carl Sanders guarding him. His keys were not taken until he had been placed in the automobile. At the time, we thought some of the keys would fit the doors of the stores.

After we tied up the watchman, we drove both

Respondent's Exhibit A—(Continued)

cars around the corner to the front of the merchandise store and four of us went over to the store and tried the keys on the two front doors, but the keys did not fit and we were unable to open the doors. I went back over to the four door sedan and got a crow bar that we had there and went to the side door of the store and forced it open. Wright, Crist, Hartman and I went into the store, Wright and Crist went to the rear, Hartman over to one side and I went up to the front part of the store. I overheard Wright make a remark about the safe being open and empty. Wright went up the street and was gone about 10 minutes, when he came back and asked for the crow bar. I gave the bar to him and asked him what he was going to do and he replied that he was going to go up the street and see what he could see. I did not see him again until just before we left town. When Wright left with the bar, we went outside the store and saw a truck that had just come into town. He pulled around the corner and Hartman and I jumped in our car [133] and went after him. We found him asleep in his truck and stuck him up and took his money from him, as he had nothing else. We took him back to the four door sedan, tied his hands, and put him in the car with Sanders and the watchman. Hartman and I went back over to the merchandise store and saw a truck that had just pulled up in front of the tire store that is located in the rear of the merchandise store. We stuck him up and Hartman and Crist took him in the tire store where

Respondent's Exhibit A—(Continued)

they tied his hands and his feet and sat him in the corner.

I went out to the filling station and pumped the glass tank full of gas while Hartman went after the two door sedan, brought it over and filled it with gas and backed it up to the side door of the merchandise store. Crist stood guard in the tire store while this was being done and later went in the merchandise store to load up the car with the loot that had been chosen. Hartman went after the four door sedan and returned with Sanders and the two prisoners. They were taken in the tire store with the third captive and left there.

Just previous to the time that we left town and while were were in the tire store with the prisoners, Wright came back from up the street and I did not see what he had with him. Whatever he had he put in the two door sedan and he, Crist and Hartman got into it and pulled out. We went to Mattoon for breakfast and later went to Sky Line Springs where we stayed until noon. During the [134] afternoon we drove back into Decatur and just before reaching town we stopped at the side of Route No. 121 and discussed what we were going to do. Tuck Wright said that he had another job in another small town near Decatur that would be similar to the one at Strasburg, but Crist and I disagreed with him on it. Sanders also disagreed with and later on Sanders told me that he was sore because Wright had entered the post office in Strasburg.

Respondent's Exhibit A—(Continued)

While at Strasburg, Illinois, four of us were armed with .45 caliber Colts automatic revolvers and one with a .38 caliber police special revolver. We also had two 12-gauge shotguns and three Springfield army rifles.

I did not see any of the musical instruments that were taken from Strasburg, Illinois, until we were arrested at Decatur. After our arrest, I saw a guitar hanging on the walls of the Sheriff's office and I was told it was taken from Rommel's house on the night the police made the raid at that place.

Wright has two brothers, a wife and two children living in Mattoon, Illinois, and one brother living in Charleston, Illinois. He is not divorced from his wife, but he does not live with her. Their home is somewhere between 9th and 16th street on Route No. 16 in the city of Mattoon.

/s/ ROBERT "BOB" RAYMOND.

Subscribed and sworn to before me at Paris, Illinois, on this the 14th day of May 1930.

/s/RONO KEEFE,
Post Office Inspector. [135]

Witnesses:

/s/ JEROME WILLIAMSON
/s/ ROSCOE RIVES
/s/ ROY JOHNSON
/s/ R. E. RAGAINS
/s/ CHARLES DANNY

Respondent's Exhibit A—(Continued)

GOVERNMENT'S EXHIBIT No. 2

Case No. 140,499-D

STATEMENT OF JOSEPH G. HARTMAN

State of Illinois,

County of Edgar—ss.

I, Joseph G. Hartman, being first duly sworn, deposes and states:

This statement is being made in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, without any promise of reward, or threats being made against me, knowing that the same may be used in the prosecution of the case.

On the night of April 8, 1930, Carl Sanders, Monte Crist, Tuck Wright, Bob Raymond and I left Decatur, Illinois, in two automobiles. We drove around the country for some time, and I was riding in the four door sedan with Bob Raymond. Sanders, Crist and Wright were riding in the two door sedan. Both of these cars were model "A" Ford machines. [136] Some time after midnight, we drove through the town of Strasburg, Illinois, and some one of the fellows suggested that we make that place. It was agreed and Raymond and I drove back into town where we stuck up the night watchman and then signalled with a flash light for the other fellows to come in. I held a gun on the watchman while Raymond searched him. We took his pocketbook, keys, badge and gun and tied his hands behind him. The other car came into town and all of the fellows got out of it. The watchman was taken to the rear

Respondent's Exhibit A—(Continued)

of the building where he was searched and he was then placed in the rear of the four door sedan, with Sanders in the front seat to guard him. After we had entered one of the stores we went down the street and made captive of a bread truck driver, who was also searched and placed in the same car with the night watchman. After we had been in town for some time, a third man came in driving a truck and we tied him up in a garage and left him there. When we left town we, also, took the watchman and the driver of the bread truck to this garage and left them.

We got about $12.00 in money from the robbery at Strasburg and about two baskets full of merchandise. I saw the neck of some kind of a musical instrument in the back end of the two door sedan, but do not know whether it was a guitar or mandolin.

Sometime late the afternoon of the 9th, we [137] arrived at Decatur, Illinois, and I went to the railroad Y.M.C.A. where I had a room.

/s/ JOSEPH G. HARTMAN.

Subscribed and sworn to before me at Paris, Illinois, on this 14th day of May, 1930.

/s/JEROME WILLIAMSON,
Post Office Inspector.

Witnesses:

/s/ ROSCOE RIVES.
/s/ ROY JOHNSON.
/s/ CHARLES DANNY.
/s/ RONO KEEFE.

Respondent's Exhibit A—(Continued)

GOVERNMENT'S EXHIBIT No. 3

Case No. 140,499-D

STATEMENT OF CARL SANDERS

State of Illinois,
County of Edgar—ss.

I, Carl Sanders, being first duly sworn, deposes and state:

This statement is being made in connection with the burglary of the post office at Strasburg, Illinois, on the early morning of April 9, 1930, to aid in the investigation of that case, without any promise of reward, or any threats being made against me, knowing that the same may be used against me.

On the night of April 8, 1930, Monte Crist, Tuck [138] Wright, Joe Hartman, Bob Raymond and I, left Decatur, Illinois, in two automobiles. I was riding in a two door Ford sedan with Crist and Wright. Raymond and Hartman were in a four door Ford Sedan. Both were model "A" machines. Sometime after midnight we drove through the town of Strasburg, Illinois, and some of the boys suggested that we make that place. Some one in the crowd said we would have to find the "Night clown," so it was agreed, and Raymond and Hartman drove back into town and circled around the block, found the night man and stuck him up. They then gave us the signal to come in. I was driving the car and we drove up along side of the four door

Respondent's Exhibit A—(Continued)

sedan and everyone got out. Some of the fellows took the watchman to the side of a building and tied his hands. They then brought him to the car that Hartmand and Raymond were in and placed him in the back seat, while I sat in the front seat, about two hours, during the time the other fellows broke in the stores and post office.

About an hour before we left town Tuck Wright came up to the car and asked the night watchman for the keys to the post office, bank and the stores. The watchman informed him that he did not have any of the keys to the buildings. Wright, at the time, asked the watchman if the .25 caliber automatic revolver belonged to him and he also asked him what he expected to protect with that gun. Wright further stated that he would bring the [139] watchman a good gun when he came back to rob the bank. Wright also questioned the watchman as to whether there was a safe in the post office and wanted to know if there was any money in it, but the watchman was unable to inform him. Wright then went away and I did not see him again until after we had left town. When he made mention to the watchman about the post office, I advised him to stay away from it.

Leaving town, Wright, Monte Crist and Hartman were in the two door sedan, while Raymond and I were in the four door sedan, Raymond driving. None of the merchandise taken was placed in the car in which I was riding. We drove from

Respondent's Exhibit A—(Continued)

Strasburg to Mattoon to the home of Wright's brothers where we had breakfast. We went from there to Decatur, arriving about noon, going to the home of Lionel Rommel. I noticed that among the loot taken out of the car in which Wright rode, there were 1 guitar, 1 clarinet, and some merchandise. Wright was wearing a gold ring, with a ruby set, bearing the initial "F". We asked him where the musical instruments and ring came from and he told us that he had taken them from the post office in Strasburg.

I do not know if any of the other fellows broke in the Strasburg post office, but do know that they were "Sore" because Wright had gone into it. The fact that Wright entered the post office was one of the things that caused us to split up. [140]

All of the fellows that were at Strasburg were armed, Monte Crist had a .45 caliber Colt revolver, in fact all of the fellows had the same kind of a gun, except myself and I did not have any revolver. However, in the car in which I sat with the watchman, and a bread truck driver, who was brought to the car, for me to guard, there were 1 sawed-off shot gun and three army rifles laying at the feet of the prisoners. I do not know where the revolvers and rifles came from as the fellows had them when I joined them on April 1, 1930, at Casey, Illinois.

When Wright came up to the car to talk to the watchman about the post office, he wore a mask. I

Respondent's Exhibit A—(Continued)

did not see any of the other fellows wearing a mask while at Strasburg.

/s/ CARL SANDERS.

Subscribed and sworn to before me at Paris, Illinois, on this 14th day of May, 1930.

/s/ RONO KEEFE,
Post Office Inspector.

Witnesses:

/s/ JEROME WILLIAMSON.
/s/ ROSCOE RIVES.
/s/ ROY JOHNSON.
/s/ CHARLES DANNY. [141]

GOVERNMENT'S EXHIBIT No. 4

STATEMENT OF CARL SANDERS

I, Carl Sanders, being now in the office of the State's Attorney of Macon County, Illinois, make the following statement of my own free will, no threats nor promises of any kind being made to me to get me to make this statement, and being informed by Victor C. Miller, State's Attorney of Clark County, Illinois, that any statement that I make may be used against me; this statement is being made in the presence of Victor C. Miller, Harry O. Coldren, Sheriff of Clark County, Illinois, F. A. Doolen, policeman and E. L. Doyle, Deputy Sheriff on this the 25th day of April, 1930.

My name is Carl Sanders and my home is Marblehead, Illinois, and my age is 34 years.

Respondent's Exhibit A—(Continued)

About a month ago Joe Hartman, "Shorty" Beasley and I were in Casey, Illinois and we saw two boys and one girl leave Casey about twelve o'clock at night. We knew that the boys and girls were from Greenup and had seen the boys and girl in a restaurant and they were talking pretty lively in the restaurant. The boys said that they were not going to take the girl home and she said "hell if they did not want to take me home I'll walk" and I think that Hartman or Beasley said "she did not have to walk that we would take her home." The other two boys said "we will take her home." They left and got in a car and we got into [142] Hartman's car and took out after them figuring that we would stop them and take the girl away from them and make the boys sore. We could not catch them after following them half way between Casey and Greenup. They turned into a barn lot and drove the car right into a barn and we stopped out along the road by a big tree and Hartman got out and went over to the barn and he came back back, and said "Oh hell they only had two dollars on them. Hartman took a gun with him when he went over to the barn in fact he was the only one that had a gun. The gun was a .45 Colt automatic. Beasley and I stayed in the car while Hartman went into the barn and held the boys up.

About a week later Joe Hartman, Mark "Smiles" Bowles and I were in Casey one night, we planned to hold up "Sycamore" Hills and we figured out the way to do it before we started and decided that

Respondent's Exhibit A—(Continued)

we would take him just as he got out of his car. We drove out on the pavement and parked about a block from his house about three o'clock in the morning; "Smiles" Bowles stayed in the car and Sycamore Hills drove by Bowles as he was parked. Previously Joe Hartman and I had gone to the barn and were waiting for Hills to drive into the garage. As he got out of the car I put a .45 Colts Automatic on him, told him to put his hands in the air which he did and Hartman went through his pockets. When he was told to put his hands up Hills said here is the change bag take it. He pulled [143] the change bag out of his pocket and there was $18.00. We got around $80.00 from Hills and my share was $16.65. Hartman was armed with a .45 Colts. After we held him up we drove back to town and I went back to the farm where I was working.

In a couple of weeks later about April 13th, 1930 on Sunday night Joe Hartman, Bob Raymond, Monte Crist and I were driving around out in the country starting to a stone quarry to get some Nitro Glycerin, fuses and caps, and before we got to the quarry we ran onto a car approaching us, Crist was driving the car, and Crist pulled across the road and stopped the car, Crist, Bob Raymond and Joe Hartman got out of the car and I got under the wheel keeping the engine of our car running, and the other fellow put guns on a girl and a boy and they told them to get out of the car and they were searched at the point of the guns and got a diamond

Respondent's Exhibit A—(Continued)

ring, wrist watch (man's wrist watch), and I don't know whether they got any money or not.

The same night about an hour and a half later we ran across another car approaching us and I was driving the car, I drove across-wise the road in front of the car and stopped it, Monte Crist, Joe Hartman, Bob Raymond got out of the car and went up to the car and made the two men get out and held them up and got a wrist watch and tied both of them up with wire and took them to a school house about a half mile away. Before we left the car we cut the spark plug wires so that they could [144] not follow us. We took them to the school house so that they would not be out in the cold.

This Sunday night we had three Springfield rifles, two sawed off shot guns, two Colt .45 automatics, a 32, 38, 25 caliber revolvers in the car with us.

About in an hour or more we saw a car approaching west of Westfield in Clark County, Joe Hartman driving, and he drove accross the road and compelled the car to stop and Joe Hartman, Monte Crist and Bob Raymond got out of the car and went up to the car and made him get out of the car and searched him and then took him to a school house just over the line in Coles County and stripped him of his clothes and left him and went back and took his car and drove it away with us, Bob Raymond driving the car away, this was a Ford Roadster Model A.

The next night, Monday night I think after we had driven to Decatur, Illinois and back, we broke

Respondent's Exhibit A—(Continued)

in the back door of a Kroger Store in Casey and stole some cigarettes. I think about a carton and some cheese and crackers.

After we had held up the two boys and the girl west of Casey and Sycamore Hills a week or so later, Joe Hartman, Bob Raymond, Tuck Wright, Smiley Bowles came and got me at Smiley Bowles' home and told me that they were going to pull a big job at Mattoon, so I went with them in the Ford sedan that they were driving and went to a private garage and Bob Raymond and Monte Crist went in the garage and got a Reo Truck and we started [145] to Mattoon and went as far as Westfield where the truck got on fire. We stopped and put out the fire and abandoned the truck in the street in Westfield, leaving the truck right in the middle of the street.

On Thursday night about April 10th, 1930, Bob Raymond, Joe Hartman, Monte Crist, Tuck Wright and I drove two Ford sedans down to Strasburg, Illinois, and I stayed in the car and the other fellows brought the night policeman to the car where I was and left him with me and I talked to the policeman while the other boys were robbing a store. They got a car load of merchandise and loaded it into the other car and after that was done the policeman was tied up and left in the store that they had robbed.

A truck driver was tied up and put him in the same store with the policeman. He was all ready there when I saw him.

Respondent's Exhibit A—(Continued)

Smiley Bowles and Joe Hartman told me that Monte Crist, Bob Raymond, Tuck Wright, Smiley Bowles and Joe Hartman on the Hunk Finn holdup and that they got between $100.00 and $170.00. They told me that they went in the back door and Bowles and Hartman stayed on the outside and watched and all of them were armed with guns.

/s/ CARL SANDERS.

Witnesses:

/s/ VIRGIL BELCHER.
/s/ EDGAR L. DOYLE.
/s/ H. O. COLDREN.
/s/ L. E. STEPHENSON. [146]

GOVERNMENT'S EXHIBIT No. 5

STATEMENT OF JOSEPH GLENN HARTMAN

I, Joseph Glenn Hartman, being now in the office of the State's Attorney of Macon County, Illinois, make the following statement of my own free will, no threats nor promises of any kind being made to me to get me to make this statement, and being informed by Victor C. Miller, State's Attorney of Clark County, Illinois, that any statement that I may make may be used against me. This statement is being made in the presence of Victor C. Miller, State's Attorney of Clark County, Illinois, Harry O. Colgren, Sheriff of Clark County, Illinois, V. A. Belcher, Deputy sheriff and C. A. Thrift, sheriff of

Respondent's Exhibit A—(Continued)

Macon County, Illinois, and L. E. Stephenson, Assistant State's Attorney of Macon County, Illinois, on this 25th day of April, 1930.

My name is Joseph Glenn Hartman and my age is 24 years and live at Casey, Illinois.

About six weeks ago on Saturday night about one o'clock in the morning, Monte Crist, Bob Raymond, Carl Sanders, Tuck Wright and I met at Sycamore Hills' Skating rink, and got to talking and needing some money decided to rob Huck Finn who is a clothing store man in Casey; Tuck Wright, Bob Raymond and I got in a Pontiac Coupe and the two others got in Ford Coupe and drove down to the highway and parked the car right at the side of the [147] store. Tuck Wright, Bob Raymond and Monte Crist went to the back door of the store and before they got to the back door a fellow by the name of Markwell came out of the back door so they made Markwell go back into the store. Tuck Wright, Bob Raymond and Monte Crist went into the store and held Huck Finn up. One of the fellows in the inside of the store threw a gun threw the front door. Bob Raymond went on the outside of the store and got the gun and General Bragg was standing across the street so Bob Raymond went and got Bragg and made him go into the Store. They got $111.17 and on the split I got somewhere around $22.00 out of the holdup. We drove out of Casey to the Oak Grove School where the split was made. During the time they were

Respondent's Exhibit A—(Continued)

holding up the store I stayed in the car watching to give the alarm if anyone came up.

The next Saturday night Carl Sanders, Ralph Beasley and I went out west of Casey in my Ford Coupe following two boys and a girl that we had seen in the White Way Cafe. We had been going to Greenup to dances and had seen the girl there before and we followed them and saw them turn into a barn and I parked out in the road and I got out and went into the barn, with my hat pulled down over my face told them to crawl out of the car and stand in the light of the car. I had a 45 Colt automatic with me and I told them to lay their pocket books and money on the fender and I [148] searched one of the fellows and I got $3.95 and went back to the car and went on into Casey. During the time that I held up the two boys and the girl, Sanders and Beasley stayed in the car.

Carl Sanders, Smiley Mark Bowles and I met at Sycamore Hills' place of business and about when he got ready to go home we planned to hold him up, so we left before he left and went over to Hills' Garage and waited for Hills to come, parking the car on the pavement about two blocks away. When Hills came in Sanders put a gun on him and took between $75.00 and $80.00 off of him. I took the money off of Hills. Smiley Bowles stayed at the car. Sanders and I were masked. This was the next Sunday night I think after we had held up the two boys and girls. We three split the money and I got twenty-eight dollars.

Respondent's Exhibit A—(Continued)

The next job we pulled was at Strasburg, Illinois, when Monte Crist, Bob Raymond, Tuck Wright, Carl Sanders and I had been to Terre Haute, Indiana and got some beer to drink, we went back to Casey and while riding around we decided to go to Strasburg and hold up the general store for money and we drove on over to Strasburg and one car went into town and the other car stayed out of town. Boy Raymond and either Tuck Wright or Monte Crist went in and tied the town marshal and flashed a light and we drove on into town with the other car and Crist and Raymond went to the general store and pried the back door open and [149] Crist, Raymond and I went inside and Sanders stayed in the car with the night watchman and I don't know where Wright went but I think he went to night watchman's office and then there was a bread truck came in Raymond and I went down and tied him up and put him in the car with the night watchman. We went back down to the store and another truck came up and Raymond and Crist tied him up and took him to a garage and then put the night watchman and the other fellow in with him. When I got the second truckman tied up I went outside and they were in the cars ready to go. We got around $12.00 in the general store. Tuck Wright told the night watchman that they would return and give him a good gun. I do not know how much merchandise we got out of the store but I did not take any of it. We drove to Sky Line

Respondent's Exhibit A—(Continued)

Springs that night and stayed there in the afternoon then came to Decatur.

We laid around in Decatur until Sunday night and we then went back down to Casey and laid over about four miles east of Casey all day sleeping in a barn and went to Martinsville for supper and went over southeast of Casey and held up a girl and her fellow. The girl was Juanita Cackley and I knew her. We drove up beside them and ordered them to get out of the car and three of us got out all with guns. Sanders or Crist went over to the car and I stood back of the car and they got about $7.00 off of him, a diamond ring, and they took the [150] distributor brush off of his car so he could not follow us.

We then went a mile south of Casey and held up Ernest Blood and Vaughn Arney. As we met them we pulled in front of them and turned them around Crist and Raymond rode with them going two miles west and one half north to a school house and tied them up and gagged them got a pocket watch and a wrist watch and I don't know whether any money was gotten off of them or not. We were armed with guns. On this night we had a lot of guns in the car consisting of Springfield rifles, 45, 38, 32, 25 automatics and revolvers.

We went north of Oak Grove Log Cabins and started east on the Westfield road and over took a fellow driving a Ford Roadster, who was a school teacher by the name of Horner Raymond and I

Respondent's Exhibit A—(Continued)

got out after we had stopped him and took twelve dollars from him and took him in our Ford sedan and turned around and went back west to a school house and took him in and tied him up took his clothes, consisting of a suit and top coat and left him in his underwear. We got a wrist watch off of him. We were armed with Colt 45 automatics.

We went back east and to a mile north of Westfield driving the Ford roadster that we had taken from Horner and flagged a guy but he would not stop and he passed us in the Ford sedan and the Ford roadster turned on the lights and the fellow pulled up beside the road Raymond, Crist and I [151] got out searched him for guns and his money and then took him north about two miles and east a mile and took him to a school house and tied him up and Monte Crist took one fellows suit and we got ten dollars off of the two fellows. We were armed when he held him up.

We went east and north through Kansas and went to Paris and went up through Danville and I got in the Ford sedan and went to sleep in the back of the car and when I woke up they had parked the Ford Roadster along the road and we laid around in that country Monday and Tuesday and Tuesday night coming down from Watseka we went west from Watseka seventeen miles and turned north at Gilman and overtook four fellows and we took them back to a school house and got ten or eleven dollars from them, a fountain pen,

Respondent's Exhibit A—(Continued)

pencils a wrist watch and pocket watch, and come on south went into the edge of Bloomington and eat breakfast and come on into Decatur getting there about ten o'clock and stayed at the Lincoln Hotel and went out to Charleys Wilson's that night where we stayed until arrested.

/s/ JOSEPH GLENN HARTMAN.

Witnesses.

/s/ C. A. THRIFT.
/s/ VIRGIL BELCHER.
/s/ H. O. COLGREN [152]

GOVERNMENT'S EXHIBIT No. 6

STATEMENT OF ROBERT RAYMOND

I, Robert Raymond, being now in the office of the State's Attorney of Macon County, Illinois make the following statement of my own free will, no threats nor promises of any kind being made to me and being informed by L. E. Stephenson, Assistant State's Attorney of Macon County, Illinois that any statement that I may make may be used against me; this statement is being made in the presence of C. A. Thrift, V. A. Belcher, Victor C. Miller and Harry O. Coldren on this the 25th day of April 1930.

My name is Robert Raymond and I am 25 years of age and my home is Cleveland, Ohio.

About six weeks ago Monte Crist, Slim Wright, Smiles Bowles, Joe Hartman, Carl Sanders and I met in Casey, Illinois and decided to rob Huck

Respondent's Exhibit A—(Continued)

Finn's store so we drove beside the store and parked them and Joe Hartman and one of the other boys stayed in the two cars and the rest of us got out and went to the back door and we caught a fellow that had just come out of the store and we took him back with us and made him knock on the door and call to Huck to open the door. Huck came to the door and opened it rushed in and three fellows were sitting at a table and we lined all of the men up besides the rack and we went through them and got three or four dollars off the table and [153] a couple of dollars in change in the safe and got the rest off the men we had lined up, the biggest part of it coming off of Huck Finn. The four of us who went in were armed with 45 Colt automatic and two of us were masked. Monte Crist and Smiles Bowles were the two that was masked. A fellow came around snooping and one of the fellows threw a gun threw the front door and went out and got the fellow snooping around getting him across the street. He was brought in and lined up with the rest and then all were tied with neck ties. The fellow was called General Bragg or general nuisance or something. After we got them all tied up we all left.

Joe Hartman, Carl Sanders, Monte Crist and I stopped on the road on our way into Casey, and planned to rob Sycamore Hills and went down to his place of business and watched it and about when he was ready to close up his business we left and

Respondent's Exhibit A—(Continued)

went down to his garage and Carl Sanders and I planted ourselves in the garage and Hartman and Crist stayed in the car and when he came in and got out of his car we put our guns on him and tied him up. When Sanders put his gun on him he threw the money bag in the corner. We got the money bag and left. We got around $75.00 on this job.

Carl Sanders, Joe Hartman, Slim Wright, Monte Crist and I went down to Strasburg, Illinois and drove through and went on to Stewardson and then came back and parked one car about a quarter of a [154] mile north of town and Joe Hartman and I went back to the town in one of the cars and found the night marshal on the corner and I drove up in front of him and put a gun on him and tied him up and put in the back of the car and got a little money off of him. I signalled to the other car to come on in with a flash light and they came in. We parked the cars on the main street opposite the main store of the town and went in the store from the side entrance and some of the boys got some cigarettes, candy, a couple of pairs of shoes, a grip and I do not know what all and about that time a truck driver rolled in so I went after him and he turned around the corner and I thought he went on out of town but Joe Hartman and I found him in his truck asleep. We put a gun on him and tied him up and took him to the car and put him in the car with the town marshal. We some money off of him, I do not know how much. Another fellow

Respondent's Exhibit A—(Continued)

in a truck pulled up to a tire store back of the general store and Monte Crist, Joe Hartman and I went and put our guns on him, tied him up and took him into the tire store and then got the town marshal and the other truck driver and put them all three in the tire store. We got some money off of the second truck driver also a 32 Harrison & Richardson revolver. We then all got into the two cars and left town and went around by Charleston and then went to Decatur.

On Sunday night, April 13th 1930 Monte Crist, Joe Hartman, Carl Sanders and I went from [155] Decatur, Illinois to Casey getting there about eight thirty and drove out east of Casey on a gravel road about a mile and one-half east of the hard or farther I guess and saw a car coming up behind us and we pulled cross-wise of the road and stopped the car and Hartman, Crist and I got out and put our guns on a boy and a girl who was in the car and made them get out and we got off of him and of the boy and a wrist watch I think off of him and a diamond ring off of the girl, tied his hands together and I took the distributor brush off and we drove on south and then swung west and crossed the hard road about a mile and come across two men in a Ford touring car stopped them and turned them around and took them to a school house and took them inside and tied them up and took what they had, consisting of a couple of watches and some money that was dropped in the car and some

Respondent's Exhibit A—(Continued)

money off of them. I do not know how much money we got. One of the fellows was a fat fellow and the other was slim. We left the car behind the school house and left the fellows in the school house tied up and drove on towards Charleston and about a mile from the Charleston hard road we came across a Ford roadster headed toward Westfield and we went after him and stopped him west of Westfield. We pulled in ahead of him and ordered him to stop and I ordered him to get out of his car and to get into our car and we took him back to a church a mile from the Charleston hard road, [156] stripped him tied him up and left him in the church. We took his car with us and drove his car away. We got a wrist watch off of him and some money.

We then went west of Westfield and headed for Kansas and we met a Whippet Coupe with two fellows in it and we swung across the road ahead of them and stopped them and I got in the car with them and made them turn around and took them to a school house just south of Kansas a little ways. I put a gun on them and made them drive the car to the school house. We took them into the school house and stripped the little fellow, tied both of them up got a watch or two, a ring or two and some money off of them and left the car in back of the school house.

We headed up towards Danville, Illinois, and dropped the car and went up through Valpariaso,

Respondent's Exhibit A—(Continued)

Indiana, and then back through Watseka and Gilman and just out of Gilman, north we drove along side of a car with four fellows in it, this was a Pontiac sedan. We turned them around and took them back north and east of Gilman to some little town and tied them up in a school house. Joe Hartman and I got into the car with the four fellows putting them in the back seat and Joe and I got in the front seat and drove the car. We got a ring, a watch or two and some money off of them. We left them in the school house and brought the car back to Gilman and left it there and came to Decatur.

Slim Wright, Joe Hartman, Carl Sanders, Smiles Bowles and I along with Monte Crist planned to do a job in Mattoon and wanted a truck and I was told where the truck was and they took me to where the truck was and I went and got it out of a garage or barn and we drove up the hard road to Westfield and when we got to Westfield the truck got on fire and we abandoned the truck in the middle of the street.

Monte Crist, Carl Sanders, Joe Hartman and I went to Charleston and Joe and I went in the depot of the Big Four and there was two fellows sleeping on the floor and one fellow sweeping up in the ticket office and I put a gun on the fellow that was sweeping and Joe Hartman put a gun on the two fellows on the floor and I made my man open up the safe and the cash drawer and got $100.00 out of the safe and a 25 off of the window and a 32 off of the expressman and tied all of them up and put

Respondent's Exhibit A—(Continued)

them in back room and we left and came back to Decatur, Monte Crist and Carl Sander stayed in the car while Joe and I pulled the job.

/s/ ROBERT RAYMOND.

Witnesses:

/s/ C. A. THRIFT
/s/ VIRGIL BELCHER
/s/ H. O. COLDREN
/s/ L. E. STEPHENSON [158]

GOVERNMENT'S EXHIBIT No. 7

June 2, 1930

STATEMENT OF CECIL WRIGHT

I, Cecil Wright, being first informed by Special Agents A. M. Gladsteen and M. P. Scanlow of the U. S. Department of Justice of my constitutional right do hereby make the following statement voluntarily, free from duress and without threat or promises of immunity.

I am 24 years of age and was born at Charleston, Ill.

I first met Mark Bowles at Casey, Ill., about March 1, 1930. At that time I was with Monte Chris's gang.

I was released from Pontiac, Ill, Reformatory on April 28, 1927 on Parole. I was paroled to Pat Nacy of Mattoon, Ill. Later I was changed over to a Mr. Phillips of the Browns Shoe Factory, Mattoon, Ill. In the summer of 1928 I came to East

Respondent's Exhibit A—(Continued)

Chicago, Indiana, where I lived with my mother

C. W.

Mrs. Dora Wright. I worked around East Chicago, Ind., until about the first part of March 1930, when Monte Criss Bob Raymond and Ed Murray came to me and told me that I had violated my Illinois Parole and that I was wanted there. Criss promised me $2000.00 in cash if I would go back to Mattoon, Ill., and join his gang—Criss gave me $100. cash and promised to give me the rest later on. I never did get the $1900—except about $300 later on. [159]

Enroute to Mattoon, Ill., from East Chicago, Ind., Criss told me about robbing the Humboldt, Ill., bank and that he and Bob Raymond had pulled a robbery at the Sullivan, Ill., Armory—I saw the guns they got from the Armory job. There were 3 Rifles 10 Automatic Pistols—2 or 3 thousand

C. W.

rounds of rifle ammunition and 2 pair of field glasses and several gun cleaning outfits. Criss gave me a 45 Colt Automatic Pistol No. 304323 which was taken in the Sullivan, Ill., Armory job. Later on he gave one of the guns to Bowles. The sereil number was filed off.

I was with the Criss gang about a month and a half. I accidentally shot myself in the left hand and while I was waiting for the hand to heal, Criss gave me a Ford Sedan to drive to East Chicago, Ind. The Ford is a stolen car and was stolen by Criss. I don't know where the car was stolen from.

Respondent's Exhibit A—(Continued)

ter of United States of America vs. Robert Raymond, et al., Criminal No. 11032, as fully as the same appear from the originals now on file and of record in my office as Clerk of said Court.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at my office in the City of East St. Louis, in the District aforesaid, this 6th day of July, A. D. 1942.

(Seal) D. H. REED,
Clerk. [162]

District Court of the United States
Northern District of California

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 162 pages, numbered from 1 to 162, inclusive, contain a full, true, and correct transcript of the records and proceedings in the matter of Cecil L. Wright, Petitioner, vs. James A. Johnston, Warden, United States Penitentiary, Alcatraz, California, Respondent, No. 28026, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of $39.60, and that the said amount has been charged against the United States.

In Witness Whereof, I have hereunto set my

hand and affixed the seal of said District Court at San Francisco, California, this 5th day of August, A.D. 1948.

(Seal) C. W. CALBREATH,
Clerk. [163]

[Endorsed]: No. 12014. United States Court of Appeals for the Ninth Circuit. E. B. Swope, Warden, United States Penitentiary, Alcatraz, California, Appellant, vs. Cecil L. Wright, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed August 5, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12014

JAMES A. JOHNSTON, Warden, United States Penitentiary, Alcatraz Island, California,
Respondent-Appellant,

vs.

CECIL L. WRIGHT,
Petitioner-Appellee.

ORDER EXTENDING TIME TO DOCKET

It appearing that on April 23, 1948, respondent-appellant filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from an order and opinion of United States Circuit Judge William Denman entered that day discharging petitioner-appellee from the custody of said respondent-appellant, the then Warden of the United States Penitentiary at Alcatraz, California, and filed in the District Court of the United States for the Northern District of California in case number 28026, on motion of Joseph Karesh, Esq., Assistant United States Attorney for the Northern District of California, and good cause appearing therefor,

It Is Hereby Ordered that respondent-appellant herein may have to and including the 23rd day of

August, 1948, to docket the above-entitled case and file the record on appeal herein with the United States Court of Appeals for the Ninth Circuit.

Dated July 16, 1948.

/s/ FRANCIS A. GARRECHT,
United States Circuit Judge.

[Endorsed]: Filed July 16, 1948. Paul P. O'Brien, Clerk.

[Title of U. S. Court of Appeals and Cause.]

STATEMENT OF POINTS TO BE RELIED ON IN APPEAL AND DESIGNATION OF CONTENTS OF RECORD TO BE PRINTED

James A. Johnston, Warden of the United States Penitentiary at Alcatraz Island, California, appellant herein, hereby designates the entire record filed with this Court as necessary for the consideration of the appeal, and the following constitute the points to be relied upon on appeal:

1. That the Honorable William Denman, United States Circuit Judge for the Ninth Circuit, should have denied the petition for writ of habeas corpus filed by appellee before him.

2. That the Honorable William Denman, United States Circuit Judge for the Ninth Circuit, erred when he ordered the appellee discharged from the custody of the appellant.

3. That the Honorable William Denman, United States Circuit Judge for the Ninth Circuit, erred

when he found that the appellee had been denied the efficient (effective) assistance of counsel during the proceedings before the United States District Court for the Eastern District of Illinois in the case of United States of America vs. Tuck Wright, alias Cecil Wright, et al., Criminal Number 11,032.

4. That the sentence imposed against appellee by the United States District Court for the Eastern District of Illinois in the case of United States of America vs. Tuck Wright, alias Cecil Wright, et al., Criminal Number 11,032, is a valid existing judgment presently in full force and effect and justifiable cause for the present continued detention of appellee by appellant.

Respectfully submitted,

/s/ FRANK J. HENNESSY,
United States Attorney.

/s/ JOSEPH KARESH,
Assistant U. S. Attorney,
Atorneys for Appellant.

[Endorsed]: Filed August 16, 1948. Paul P. O'Brien, Clerk.

In the United States Court of Appeals
for the Ninth Circuit

Excerpt from proceedings of Friday, August 27, 1948, at Seattle, Wash.

Present:

Honorable Clifton Mathews, Circuit Judge, Presiding,

Honorable Albert Lee Stephens, Circuit Judge.

Honorable William Healy, Circuit Judge.

Honorable Homer T. Bone, Circuit Judge.

Honorable William E. Orr, Circuit Judge.

[Title of Cause.]

ORDER GRANTING MOTION OF APPELLANT FOR SUBSTITUTION OF PARTY APPELLANT

Upon consideration of the Motion of Appellant, filed August 25, 1948, for substitution of Edwin B. Swope, as Warden of the United States Penitentiary, Alcatraz, California, in the place and stead of the above-entitled appellant, and good cause therefor appearing, it is Ordered that said motion be, and hereby is granted, and said Edwin B. Swope, as said Warden, be, and he hereby is substituted in the place and stead of said James A. Johnston, Warden, etc., as party appellant in the above-entitled cause.